NEW JERSEY BOARD OF PUBLIC UTILITIES

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30 November 2004

N.J.A.C. 14:3-8, EXTENSIONS TO PROVIDE REGULATED SERVICES

N.J.A.C. 14:3-10, TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Extensions of service

Adopted Amendments: N.J.A.C. 14:3-1.1, 14:3-6.2, 14:3-8, 14:5-4, 14:10
Adopted New Rules: N.J.A.C. 14:3-10

Proposed: January 20, 2004 at 36 N.J.R. 276(a)

Adopted: November 9, 2004, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Connie O. Hughes and Jack Alter, Commissioners.

Filed: November 17, 2004, as R.___ d. ____, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3); and without adopting proposed amendments to N.J.A.C. 14:3-8.4, 14:18-3.2, 14:18-6.2, 14:18-11.2

Authority: N.J.S.A. 48:2-13, 48:2-16; N.J.S.A. 48:2-27, 48:2-23.

Board Docket Number: AX03110973 (companion to AX04101148)

Effective Date: December 20, 2004

Operative Dates: December 20, 2004 (amendments to N.J.A.C. 14:3-1.1 and 14:3-6.2; new N.J.A.C. 14:3-8.1A; new N.J.A.C. 14:3-8.1B; repeals and new rules at N.J.A.C. 14:5-4, and 14:10-3; repeals at N.J.A.C. 14:10-1.1 and 1.4)

March 20, 2005 (repeal and new rules at N.J.A.C. 14:3-8.1(a) through (h); 14:3-8.2 through 8.13; and new N.J.A.C. 14:3-10)

Expiration Dates: July 31, 2007 (N.J.A.C. 14:3)
January 9, 2006 (N.J.A.C. 14:4)
August 21, 2007 (N.J.A.C. 14:5)
August 1, 2006 (N.J.A.C. 14:10)

On January 20, 2004 at 36 N.J.R. 276, the Board of Public Utilities (Board) proposed amendments and new rules to ensure that its programs reflect the smart growth policy goals of the State. The amendments and new rules will govern the responsibility borne by regulated entities for the costs of certain investments in infrastructure, based on whether the development served by the infrastructure is in an area designated for growth under the State Development and Redevelopment Plan (State Plan).

These rules replace various existing rules governing extensions of service with one consolidated, comprehensive set of new extension rules that reflect the State's smart growth policies for addressing the problems of sprawl development. The existing extension rules make no distinction between extensions serving smart growth development in areas designed for growth under the State Plan, and extensions serving sprawl development. This has resulted in subsidies to development in outlying areas, and has perpetuated barriers to development and redevelopment in areas designated

for growth under the State Plan. These new rules replace this outdated regulatory scheme with one that ensures that the cost of all extensions of infrastructure will reflect State smart growth policy. In addition, the rules include an innovative pilot program for encouraging development in certain targeted areas, called the targeted revitalization incentive program (TRIP), set forth at N.J.A.C. 14:3-10.

The Board held extensive stakeholder meetings on these rules in order to ensure thorough discussion and an opportunity for input from all viewpoints. A public hearing on the proposal was held on March 2, 2004. The Board also held informal public stakeholder meetings on June 4th, 11th, 15th, 16th, and 18th, and July 28th. Minutes or a transcript of each meeting can be obtained by contacting the Board secretary at the address below. Board staff also met with representatives of several regulated entities to clarify specific concerns these entities had raised regarding the rules. In addition, the Board posted a near-final draft adoption on the web and circulated the draft by e-mail to stakeholders who had attended the meetings, to allow a final review of the document prior to adoption. The input the Board received from stakeholders was extremely valuable, and spurred many key clarifications and modifications to the rules.

The Board is adopting most of the proposed amendments and new rules, and elsewhere in this issue of the New Jersey Register the Board is reproposing one section of the rules (addressing underground extensions) and is proposing additional amendments. As discussed in more detail below, the provisions of the rules that apply to cable television operators are being deferred to allow for additional review of the numerous and detailed comments relating to those provisions.

A public hearing on the proposal was held on March 2, 2004 before Lance Miller, Chief of Staff, the Board's designated hearing officer. The Board also accepted written comments on the proposal through March 20, 2004. At the direction of the hearing officer, the transcript and filed written comments were certified directly to the Board for its consideration. Thirty three persons submitted comments, which are summarized below, with the Board's responses. The record is available for review by contacting:

Kristi Izzo, Secretary of the Board
ATTN: Board Docket Number: AX03120973
Two Gateway Center
Newark, New Jersey 07102

Deferral of provisions that apply to cable television operators

The Board has not included in this adoption the provisions of the proposal related to cable television operators. The Board received voluminous comments on issues related to the rules' affect on cable operators, and is continuing to review these comments, consider the many issues raised, and prepare responses. However, rather than delay the entire rule adoption, the Board is adopting the remainder of the proposal and will defer the provisions that apply to cable operators until a full review of the comments can be conducted and adequate responses prepared. In addition, minor changes on adoption are made to N.J.A.C. 14:3-6.2 to reflect this deferral. The Board

expects to complete this review. Following is a brief summary of the comments on the cable provisions:

(1) The key components of the Board's proposal -- regulated rate base investment, infrastructure investment decisions subject to Board approval, Board approved tariffs -- typically do not play a role in establishing cable rates.

(2) The proposed rules provide too little guidance concerning the manner in which the rules will limit cable infrastructure investments, which will discourage cable operator investment in New Jersey.

(3) The proposed TRIP excludes cable operators, and the SGIIP offers no benefit for cable operators, so cable bears the burdens of the proposed Smart Growth rules without the corresponding benefits.

(4) Costs for cable extensions can be significantly higher in developed areas, yet the rules require cable television operators to provide extensions at no cost in these areas.

(5) The rules will put cable operators at an unfair competitive disadvantage, and consumers in those areas will be captive to the unregulated satellite companies.

(6) In distant communities that cannot receive major broadcast networks, those who cannot access cable because of the rules will be unable to receive network programming and Emergency Alert System messages.

(7) The New Jersey Cable Television Act requires that municipal consents to a cable television franchise provide for the future expansion of cable television service to the entire municipality.

(8) Nothing in the FCC's rules permits a State or local government to restrict a cable operator's ability to recover through subscriber rates the costs of infrastructure investment in its franchise area.

(9) Precluding cable operator financial support for investment in infrastructure would contravene the federal Cable Act.

(10) Federal law grants franchised cable operators a right of access to any right-of-way for electric, gas or other utility transmission, so the Board may not withdraw public rights-of-way from the operator in areas deemed inappropriate for growth.

(11) While some conditions on cable facilities deployment may be permissible, application of smart growth restrictions to cable systems would unduly restrict a cable operator's ability to use network transmission technologies in portions of its franchise area, in derogation of federal law.

(12) The Board's proposed rules could be construed to limit or modify existing franchise agreements.

(13) The smart growth rules unlawfully impede cable operators' ability to provide broadband facilities that can be used to provide voice services.

(14) Restrictions on a cable operator's ability to reach potential subscribers implicate First Amendment concerns.

(15) The smart growth restrictions have a discriminatory impact on a cable operator's ability to transmit speech to certain residences relative to other content distributors, such as broadcasters and wireless and satellite multichannel video providers.

(16) In both growth and non-growth areas, the proposed rules violate the Fifth Amendment's Takings Clause because they interfere with a cable operator's reasonable, investment-backed expectations and cause a significant economic impact on the operator's use of its network.

While the Board believes that it has ample authority to regulate cable television companies in accordance with these rules, the commenters raised many complex policy issues which require thorough review and deserve thoughtful responses. Because these rules apply to all of the Board's regulated industries, the proposal was substantial and complex, the stakeholder process was very intensive, and the Board has had a monumental task in its efforts to develop a well-thought out and effective adoption. In order to ensure a fair and balanced rule adoption, the Board needs more time to consider the provisions of the rules that concern the cable television industry. Among the issues the Board needs to further consider are the effect on emergency broadcast system messages, cost considerations, the effect of the rules on the larger market for television service, the effect on local access channels, and possible incentives for cable operators that would take the place of those available for other regulated entities under TRIP and SGIIP. For these reasons, the Board will defer the portions of the rules that apply to cable television operators until a later date,.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Karen D. Alexander, New Jersey Cable Telecommunications Association (NJCTA);
2. Zsuzsanna E. Benedek, United Telephone Company of New Jersey, Inc. – Sprint (UTCNJ);
3. Thomas A. Borden and Jamie Amir, Rutgers Environmental Law Clinic, on behalf of Clinton Township Community Coalition (CTCC);
4. John L. Carley, Rockland Electric Company (RECO);
5. Sally J. Cheong, Jersey Central Power & Light Company (JCP&L);
6. Bruce D. Cohen, Verizon New Jersey Incorporated (VNJ);
7. Kathleen A. Davis, Chamber of Commerce of Southern New Jersey (COCSJ);
8. Francis E. Delaney, Public Service Electric and Gas Company (PSE&G);
9. Michael J. Filipone, Jersey Central Power & Light Company (JCP&L);
10. Amy Hansen, New Jersey Conservation Foundation (NJCF);
11. Carla E. Hjelm, United Water New Jersey, United Water Toms River, United Water Lambertville, and regulated utility subsidiaries of United Water Mid-Atlantic (UW);
12. Joseph D. Kelly, Atlantic City Regional Chamber of Commerce (ACRCOC)
13. Theodore J. Korth, New Jersey Audubon Society; David Pringle, New Jersey Environmental Federation; Dena Mottola, NJ Public Interest Research Group; and Jeff Tittel, Sierra Club – New Jersey Chapter (ENV);
14. Ralph A. LaRossa, Public Service Electric and Gas Company (PSE&G);
15. Robert K. Marshall, Conectiv (C);
16. Cynthia T. McCoy, AT&T Communications NJ, L.P. (ATT);

17. Michael G. McGuinness, National Association of Industrial and Office Properties, New Jersey Chapter (NAIOP);
18. Vanessa Zoe Morin, New Jersey Office of Smart Growth (OSG);
19. Patrick J. O'Keefe, New Jersey Builders Association (NJBA);
20. Samuel A. Pignatelli, South Jersey Gas Company (SJG);
21. Gary Prettyman, New Jersey American, Elizabethtown and Mt. Holly Water Companies (NJA, ETW, MHWA);
22. Stacey P. Roth, New Jersey Pinelands Commission (PC);
23. Al Ruggiero, South Jersey Gas Company (SJG);
24. Frank X. Simpson, Aqua New Jersey, Inc. (ANJ);
25. Douglas Staebler, NUI-Elizabethtown Gas Company (NUI);
26. Mark F. Strauss, Applied Wastewater Management, Inc. (AWMI);
27. William P. Sukaly, Elizabethtown Gas Company (ETG);
28. Tracey T. Thayer, New Jersey Natural Gas Company (NJNG);
29. Jeff Tittel, Sierra Club – New Jersey Chapter (SC);
30. Badrhn M. Ubushin, Division of the Ratepayer Advocate (RPA);
31. J. Mack Wathen, Atlantic City Electric Company, d/b/a/ Conectiv Power Delivery (CPD);
32. Glen R. Weisman (GRW); and
33. Eric Wilkinson, New Jersey Future (NJF).

General Comments:

1. COMMENT: The impact of the proposed rule changes on the rates charged by telecommunications companies and cable television providers is unclear. Statements made at the public hearing raised the argument that telecommunications companies are not subject to rate-base, rate-of-return regulation, and therefore do recover certain specific costs covered by the rule changes through cost recovery tariffs. While this argument is largely true, there may be some unanticipated impacts on the way telecommunications and companies approach their business models under the new rules. Furthermore, cable service is primarily governed by Federal law, and the Form 1235 is used to apportion upgrade costs to and among customers. Upgrades are not the same as an extension of service into an unserved area within a franchise. The only cable rates regulated by the Board (rates that are not regulated exclusively by the Federal Communications Commission) are the basic service tier rates, and equipment and installation costs. Cable companies seek adjustments to these rates by filing a Form 1240 or 1205. We would like to reserve the right to submit further comments on the specific impacts of the proposed rule changes on the rates charged by telecommunications and cable companies as the issue matures and those companies begin to submit rate filings that include (or do not include) changes in rates attributable to the proposed rule changes. (RPA)
   RESPONSE: Regarding the provisions that apply to cable television operators, the Board has deferred adoption of those provisions in order to allow for a more thorough review of the comments received. The Board always welcomes comments from all persons and interests.

2. COMMENT: Traditional rate-of-return regulation presumes a sole provider of an essential service, that is largely assured that it will recover the costs of extensions in rates. CLECs do not have a guaranteed rate of return nor a captive rate base. Since every CLEC service is subject to competition, a CLEC, unlike the incumbent local exchange provider ("incumbent"), cannot raise the rates of one service to subsidize another, without risking the loss of customers to a competitor. Historically, New Jersey's public switched network has been provided by a single carrier, using a single architectural model. CLECs are now building other networks that are interconnected to those of the incumbent and of other CLECs. This is creating a "network of networks" that significantly increases the ability of the public switched network to withstand and recover from natural and human-made disasters. Regulations that discourage CLEC investment will leave the State dependent upon a single facilities-based provider. Businesses make decisions to expand or relocate based, in part, upon the robustness and survivability of the public switched telephone network. These marketplace dynamics and the investment process must be recognized in regulations that apply to CLECs. If the regulations are applied to CLECs, the Board should modify the rules to seek to spur investor decisions to commit capital to telecommunications providers. (ATT)
RESPONSE: The Board does not believe that these rules will hamper telecommunication investments or the telecommunications marketplace. Smart growth is economically beneficial and will encourage investment in New Jersey businesses. In addition, the rules will apply to both CLECs and incumbent local exchange providers (ILECs). Therefore, it is not clear why the commenter believes that the rules will selectively disadvantage CLECs in relation to ILECs.

3. COMMENT: We applaud the public policy purposes of Smart Growth, which is to more effectively manage and utilize land uses, and save taxpayer money by reversing the over-burdening economic, social and environmental costs caused by sprawl development. We also support the Governor's goal of revitalizing our older urban and suburban areas, preserving open space and protecting our unique natural resources. But this must be a balanced approach so that one area of the State does not carry more than its fair share of the burden. (C)
RESPONSE: The Board has made every effort to establish a balanced rule that promotes smart growth without undue impacts on the provision of adequate utility and cable service to New Jersey citizens.

4. COMMENT: These amendments should be a temporary measure. A 24-month window would provide enough data to invite comparison and to observe if any loopholes or work-arounds avail themselves. Frequently, such intricately constructed rules have unforeseeable consequences that require future additional amending. (GRW)
RESPONSE: The Board understands that future amendment of these rules may be necessary after the Board and the regulated community have worked with the rules for awhile. However, the Board believes that a 24-month sunset provision is not necessary to ensure that any needed amendments are made.

5. COMMENT: We have been integrally involved in the passage of the State Planning Act and the ongoing evolution of the State Development and Redevelopment Plan. And we are strong supporters of the Plan. We applaud the Board for its efforts to tie its rules to the State Plan, thereby incorporating smart growth principals into its rules. We are very pleased that the Board has created rules supporting extensions of service in growth areas (Planning Area 1 and 2, designated centers, and growth areas under Plan Endorsement). In order for the proposed rules to achieve their goals, all constituents will need to pay close attention to the map and policies of the State Plan as we proceed through the next round of Cross Acceptance to make sure that areas are appropriately identified for growth or preservation. We strongly support the Board's proposal to reduce subsidies for new services in areas not designated for growth (PA 3 through 5). (NJCF)
RESPONSE: The Board appreciates this comment in support of the rules.

6. COMMENT: We ask the Board to consider even stronger measures to discourage inappropriate development such as a surcharge levied against services to those developments that are located in areas not designated for growth under the Plan. (NJCF)
RESPONSE: In working towards smart growth, the Board must also fulfill its statutory mandate to ensure reasonable rates. A surcharge of the type suggested could result in higher rates or even financial distress for some regulated entities. The Board believes that the rule as adopted will strike a reasonable balance. As the Board gains experience with this new regulatory scheme, it will evaluate the effectiveness of these rule changes and assess the need for further amendments that are consistent with the Board's statutory authority.

7. COMMENT: We already have certain rate programs in place that provide incentives to business to relocate or expand in certain targeted, urban enterprise zone cities in our territory. Such efforts can be combined with other programs offered by various branches of government such as tax relief and infrastructure improvements to entice businesses and developers to choose the targeted growth areas. The Board should be commended for making smart growth a public policy priority, and the Board's extension rules and policies can be designed to be one of the tools in the State's toolbox to promote incentives for new development in the State's older, more developed regions. (PSE&G)
RESPONSE: The Board appreciates this comment in support of the rules.

8. COMMENT: We strongly urge that the final rules be made as clear and unambiguous as possible so as to avoid needless dispute and litigation in the future. (JCP&L)
RESPONSE: The Board agrees, and has attempted to provide as much clarity as possible in the rules.

9. COMMENT: The Board is vested with statutory authority to regulate utility rates and services. The Board is without authority to implement a broad-sweeping Smart Growth agenda without legislative fiat. (UTCNJ)

RESPONSE: Under N.J.S.A. 48:2-23, the Board is mandated to ensure that service provided by regulated entities is provided in a manner that conserves natural resources and the environment. Sprawl development is a major threat to New Jersey's environment. The State Development and Redevelopment Plan, enacted pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et. seq., specifically provides for distinctions between areas of the State that are suitable for growth and those that are not. The Board must also ensure that service is provided at reasonable rates. Developing in a sprawl pattern requires a greater investment in utilities that must be paid by all ratepayers. Therefore, these rules are intended to ensure that ratepayers do not subsidize utility service in areas not designated for growth.

10. COMMENT: The proposed rules violate N.J.S.A. 48:2-27 and N.J.S.A. 48:3-4, because they preclude a utility from contributing to the cost of utility extensions in areas not designated for growth and likely cause other utility customers to subsidize the cost of extensions in designated growth areas. While proper land use development and planning is a goal of state and local government, adjusting the cost of extending utility facilities is not a proper nor equitable manner of achieving that goal. Ordinarily, a public utility is required to provide safe, adequate and proper service to the customers within its franchise territory. N.J.S.A. 48:2-23. This "obligation to serve" means that a utility cannot unilaterally decide when and whether to extend its facilities to new customers. When a utility is called upon to expend large sums to extend service to remote portions of its franchise territory, the Board has been unwilling to require the existing customers to subsidize the service to new customers. Thus where the extension will not "furnish sufficient business to justify its construction and maintenance," a utility is not obligated to extend facilities at its own expense. N.J.S.A. 48:2-27. The statute leaves the Board judgment as to "sufficient business" and "the financial condition of the public utility", when those items are found to be present. The Rules, however, prohibit this result in a vast portion of our state, areas that may change as the State Plan map is periodically reviewed and modified. To the extent they do so, the Proposed Rules violate the statutory mandate. Thus, all of Proposed new Rule N.J.A.C. 14:3-8.6 must be discarded along with N.J.A.C. 14:3-8.5(a). (NJBA)
RESPONSE: The rules do not forbid a regulated entity from providing extensions to areas not designated for growth. Instead, the Board is regulating who shall pay for the extension of service. As the commenter notes, this is not an entirely new regulatory practice. The rules do not prohibit the existing practice described in the comment. In areas designated for growth, the rules simply allow developers to recover their deposits faster. If the commenter refers to the TRIP pilot program, the intent of that program is to foster redevelopment of areas of the State with existing utility infrastructure, thus bringing more customers on line, and in the long run helping to reduce costs to all customers.

11. COMMENT: Under N.J.S.A. 48:2-27, a utility can expect that the Board will exercise its "judgment" based upon the statutory factors set forth in the statute. However, under the proposed rules, the Board is not exercising its "judgment", but rather is accepting through a rulemaking the judgments of another governmental

entity through the classification of "growth" and "non-growth" areas. The Board can not lawfully delegate its ratemaking authority under N.J.S.A. 48:2-21 or its judgment under N.J.S.A. 48:2-27. (UTCNJ)
RESPONSE: By aligning its rules with the State Plan, the Board is exercising its judgment that it is important for ratepayers not to subsidize utility service that is inconsistent with the State Plan. This does not delegate the Board's authority any more than a cross reference to a definition or requirement in a Federal regulation would do so. Further, the use of the State Plan in this manner is completely consistent with existing case law, in that the Board is using the State Plan as it was intended to be used – as a guide for reviewing and formulating the Board's main extension plan.

12. COMMENT: The State Plan is currently undergoing the cross acceptance process, whereby planning areas, endorsed plans and future designated centers are all subject to change. Utilities and developers need to know their anticipated costs well in advance of commencing development so that they can obtain the necessary financing, set the rents and structure the best deal possible. The State Plan should be used as a guide to facilitate growth through the use of incentives, encouragement of regional planning, and the use of State agency regulatory authority and discretionary funding power. The Proposed Rules assume stasis, and will frustrate the long-term planning benefits they are intended to produce as the State Plan map evolves and additional centers are designated. (NJBA) (PSE&G) (NAIOP)
RESPONSE: The Board recognizes that the State Planning process is not static and change does occur over time. This is similar to the majority of State rules, which expire every five years and must be reviewed and readopted to remain in effect (See N.J.S.A. 52:14B-5.1). While the changing regulatory requirements may in some cases cause inconvenience to the regulated community, this required review is designed to ensure that citizens are not inadvertently subjected to outdated requirements. Similarly, the State Plan must be reviewed at intervals to ensure that it reflects current conditions. The Board is confident that any changes in the State Plan can be accommodated without undue disruption, as is the case with State rules. The Board recognizes that change is an integral part to all planning processes, be they those of the private or public sector. The rules as adopted recognize the change in procedure at the State Planning Commission that now focuses on plan endorsement. The State Planning Commission will no longer designate areas as "centers". However, municipalities and groups of municipalities who wish to be recognized as areas suitable for growth will now take part in the plan endorsement process. By incorporating the plan endorsement process, the Board's rules reflect the most up to date State Plan procedures, and are best suited to provide the long term planning benefits that will flow from the State Plan.

13. COMMENT: Meaningful and substantive comment upon proposed rules has been significantly compromised given that it is unknown to what extent a specific provision will or may adversely impact our business concerns. The Board has undertaken these rule changes absent a final State Plan. Accordingly, serious due

process considerations are implicated by the comment procedures employed herein. (UTCNJ)

RESPONSE: There is a final State Plan, which was adopted in 2001 and remains in effect, pursuant to the State Planning Act, until such time as an updated State Plan is adopted by the State Planning Commission.

14. COMMENT: The Board has a mandate to ensure that utility service is furnished in an environmentally responsible manner. *See N.J.S.A.* 48:2-23. However, by linking its otherwise excellent rule proposal to the State Plan – allowing areas to be identified through the plan endorsement process as "growth areas," and so receive significant infrastructure development cost-share benefits – the proposed Rules fundamentally contradict the mandate on which the Board is proceeding. There is no formal "growth area" designation in the current State Plan, and no process for identifying "growth areas." Further, the plan endorsement process is not governed by the criteria necessary to achieve resource protection. Of particular concern is the Planning Commission's continuing failure to incorporate areas critical to water supply (e.g. quality and quantity) and endangered wildlife into the State Plan and planning process. Consequently, extending services into "growth areas" designated through the endorsement process may well result in the provision of utility services in a NON-environmentally sensitive manner, in violation of *N.J.S.A.* 48:2-23. We can not support proposed §14:3-8.7 (cost-sharing for extensions in designated growth areas) because there is no assurance that the designation of "growth areas" will be environmentally responsible. To correct this, we suggest that the definition of "Designated Growth Area" at §14:3-8.2 be amended to strike sub-numeral four (4), leaving the definition of "Designated Growth Area" to include PA-1, PA-2 and designated centers only. Furthermore, these “Designated Growth Areas” must be clipped by NJDEP data sets delineating areas critical to natural resources, including but not limited to critical water, wildlife and coastal areas. These data sets must supersede these State Plan designations in order to carry out the Board’s mandate to ensure that utility extensions are provided in an environmentally responsible manner. (ENV) (SC)

RESPONSE: The Board does not believe that the rules contradict the mandate at N.J.S.A. 48:2-23 that the Board ensure that utility and cable service is furnished in an environmentally responsible manner. Since the State Planning Commission will no longer designate new centers (and instead will focus on plan endorsement), changing the definition of “Designated Growth Area” as suggested by this comment will foreclose the application of these rules on areas of the State not currently designated as a center. Under the State Plan, growth is to be encouraged in Planning Areas one and two as well as areas outside of those Planning Areas that are suitable for growth. These areas originally were termed centers, but now, in a change to better coordinate State and local land use objectives, the process will now be called plan endorsement. Within a geographic region that is applying for plan endorsement, there could easily be areas suitable for both preservation and for growth. For example, within the boundaries of a municipality, there may be both undeveloped environmentally sensitive or agricultural land as well as developed land. By using the term “area identified for growth” in a plan endorsement petition, the Board intends these rules to apply to those areas of the

municipality that are planned for growth, and not those areas planned for preservation. It is the Board's understanding that through the cross acceptance process, municipalities and counties as negotiating entities will have the opportunity to "clip" those environmentally sensitive areas represented by DEP data layers as the commenter suggests.

15. COMMENT: We commend the Board for its support of the smart growth policy goals advanced by the State of New Jersey. We too support these goals and look forward to working with the Board to amend the current extension rules and draft new rules designed to encourage development in areas designated as smart growth areas by the State. (VNJ)
RESPONSE: The Board appreciates this comment in support of the rules.

16. COMMENT: We are concerned with the potential conflict between N.J.S.A. 48:2-27 and the proposed rule. While N.J.S.A. 48:2-27 guarantees that the extension will be required in part only if it "will furnish sufficient business to justify the construction and maintenance" of that extension, the proposed rules remove all financial considerations from a determination of our obligation to serve. The proposed rules also render it financially difficult (if not impossible) to undertake extensions in non-growth areas after 2007. However, under N.J.S.A. 48:2-27, an extension request made of us will have to be honored given our obligation to serve. (UTCNJ)
RESPONSE: New N.J.A.C. 14:3-8.1(i) has been added upon adoption to clarify that these rules do not attempt to contravene the basic statutory requirement that a regulated entity is not required to provide an extension unless certain requirements are met, regardless of whether the extension serves a designated growth area or not. Further, if it is determined pursuant to N.J.S.A. 48:2-27 that there is an "obligation to serve", the rules do not negate that obligation, but instead remove the regulated entity's obligation to pay for the extension. A regulated entity will not be prohibited from extending service if an applicant or customer pays for the extension. Regulated entities should have no costs to recover in these areas.

17. COMMENT: Restricting growth will mean that overall, Southern New Jersey will be most negatively impacted. The Southern New Jersey region faces certain unique challenges due to the nature of its geography and the significant environmental regulations applicable thereto. Growth in South Jersey is already heavily restricted by existing State planning policies, like Pinelands and CAFRA. This rule will impact directly the few areas that may still want to grow. Many areas in our service territory, whether it's Cumberland County, Salem County or Gloucester County, need the ability to grow, attract jobs, attract tax revenues, provide affordable housing and reasonable commercial space. Similarly, the economic climate in southern New Jersey is challenged by the location of its economic base. Southern New Jersey's economic engine is situated in its easternmost coastal areas (i.e. strong casino and other development and redevelopment activities in Atlantic City and the tourist areas along the Atlantic Ocean) creating a need for a sufficient localized labor force to service this economic base. This proposal would have a dramatic impact on southern New

Jersey's efforts to grow its commercial and industrial businesses, to create jobs and to affordably house its residents and labor force. The proposed rule, if successful in halting development, particularly residential, in the southern New Jersey region will reduce housing for workers, including lower income workers for whom affordable housing is already a need; and this lack of housing will cause a labor shortage. It will cause a loss of significant revenue dollars due to the fact that aging baby boomers ready for retirement homes will relocate to other, less expensive markets. It will increase economic difficulties for the barrier islands supporting the tourism industry. Other less direct but significant impacts anticipated are decreases in local property tax revenues, State sales tax revenues, residential permit fees, impact fees paid by developers, and related business revenues; thus requiring additional local taxpayer dollars to fund local services. As the one area in the State with the greatest economic potential and the lowest incomes, South Jersey must be able to achieve its economic potential. (SJG) (C) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The commenters' predictions are not supported by the detailed economic analysis of the impact of implementing the State Plan, conducted by Rutgers University.

18. COMMENT: These rules set a new standard for State agency incorporation and implementation of the State Plan. By helping to reverse the traditional regulatory scheme that for too long has provided incentives for development in areas not designated for growth under the State Plan, and by increasing the incentives for development in urban and suburban planning areas, the rules get to the heart of what the State Plan is all about. We urge the Board to work closely with other State agencies with an eye to updating their rules to incorporate the State Plan as much as you have. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules. The Board is working with other agencies via the Smart Growth Policy Council, which was created under Executive Order No. 4 (January 31, 2002) to coordinate the actions of State agencies to further smart growth goals.

19. COMMENT: We strongly support those components of the rule proposal that incentivize increased development and redevelopment in New Jersey's urban centers and other areas designated as "Smart Growth" areas. We are confident and encouraged that the availability of incentives such as those proposed will serve to foster growth in the desired areas. (SJG)
RESPONSE: The Board appreciates this comment in support of the rules.

20. COMMENT: We request that the Board withdraw the Proposed Rules and instead institute a process whereby new construction, wherever approved in our State is treated equally in a manner which does not burden affordable housing, nor subsidize preferred locales. The Board's focus should be on universal, non-discriminatory utility service, not on land use planning. (NJBA)
RESPONSE: N.J.S.A. 48:2-23 requires the Board ensure that safe, adequate, and proper service provided by the State's regulated entities is furnished in an environmentally responsible manner. The State has adopted the State Plan as a

guide to environmentally responsible development. Therefore, the mandate of N.J.S.A. 48:2-23 obligates the Board to exercise its authority in a manner that will minimize or prevent the subsidization by ratepayers of service provided by regulated entities that is inconsistent with the State Plan. These rules are intended to achieve that goal.

21. COMMENT: The Summary of the agency proposal states that the lack of distinction in the existing rules between the treatment of extensions serving development in smart growth areas and those serving development in designated non-growth areas has "resulted in subsidies to development in outlying areas, and has perpetuated barriers to development and redevelopment in areas designated for growth…" The stated intent of the proposal is to eliminate these alleged subsidies and barriers. The existing rules were never intended to subsidize development; indeed they were specifically designed to *prevent* the subsidization of new development. Current rules and/or policies require that deposits and/or refunds be subject to a revenue test that does not result in ratepayer subsidies to development in outlying areas. Only extensions whose costs would result in a reasonable pay-back, can be financed by the utility. These existing formulae assure that new development will *not* be subsidized by shareholders or ratepayers. Indeed, extensions with reasonable payback periods benefit all ratepayers because, within a reasonably short period the incremental extension costs will have been recovered, and the new development will be creating revenues that contribute towards existing system costs, thereby lowering rates for all. (ETG) (NJNG) (PSE&G) (SJG) (NJBA)
RESPONSE: Please see the response to comment 23 below.

22. COMMENT: The current policies, rules and tariffs do not provide an incentive for infrastructure investments in areas not designated for growth; rather, the deposit and refund policies are intended to assure that investments in infrastructure to accommodate development meet a reasonable payback period and are thereby cost-based and reasonable. Those costs above and beyond a reasonable payback are covered via an up-front deposit collected by the utility. The deposit represents a determination of excess costs and may or may not be refunded in the future. There are no incentives to utilities to provide infrastructure in areas that are not designated for growth. The utility is provided no special rate treatment for the costs not subject to a refund; the utilities are permitted to place such costs in rate base in the next base rate proceeding, just like all other plant investment made between rate cases. (PSE&G)
RESPONSE: Please see the response to comment 23 below.

23. COMMENT: One of the reasons for the change stated in the Proposed Rules is to prevent subsidies to certain customers by others. It seems clear that a refund formula which returns deposits at rates of 10 or 20 times annual revenue for a 10 year period will result in cross subsidization of certain customers by others. In the context of a 1994 case, the Board made a detailed analysis of the refunds that resulted under eleven main extension agreements. On average, the 2.5 times refund formula in the current rules resulted in a refund of 55% of the total cost of

the projects. It seems clear that the 10 times or 20 times refund formula in the Proposed Rules (14:3-8.10, 8.11 and 8.12) will result in all new service extensions to designated growth areas being provided free of charge by the utilities, whether they meet the statutory requirements or not. All customers, not only those outside growth areas, will pay the plant costs for the new customers in designated growth areas who will pay nothing. Each utility has a certain amount of money invested in utility plant which goes to serve all customers. If the utility invests no more than its average embedded cost per customer when new customers come on line, the new customers' plant costs and the old customer's utility plant costs will be the same and there will be no subsidization. On the other hand, when a customer gets its utility plant for free, all of the other customers pay for it. This is the reason that rules which differentiate among customers are inequitable, and violate the principle of just and reasonable rates without undue preferences. (NJBA)

RESPONSE: While the existing rules may have been intended to minimize subsidies, they have nonetheless failed to prevent subsidies to development in outlying areas. Since the formula is merely suggested under the prior rules, regulated entities can and often do provide extensions free of charge to reputable developers with projects that promise to provide the regulated entity with sufficient revenue. This is most likely to happen in previously undeveloped areas, for a variety of reasons. First, the boom in development in outlying areas has brought many large and reputable developers to concentrate their projects in undeveloped areas. Second, construction in open land is easier and cheaper than construction in developed areas -- trenching and other construction does not require extensive local approvals, digging up existing streets, diverting traffic, protection against disturbance of other existing infrastructure, or removal of old infrastructure and other debris. And of course, undeveloped areas are likely to be areas not designated for growth. Furthermore, operation and maintenance costs are higher in undeveloped areas because of the low density of development, but ratepayers in densely populated areas (usually designated growth areas) and in low density areas (usually areas not designated for growth) are both charged the same amount in rates. Therefore, under the prior rules, ratepayers in densely populated areas were not only subsidizing the construction of infrastructure in outlying areas, but also its operation and maintenance. Therefore, urban customers tend to pay more than their fair share as more and more farmland is converted to development and regulated entities extend service over long distances to lower density development, where operation and maintenance costs tend to be higher. The rules adopted herein will ensure that regulated entities do not provide extensions at little or no charge in areas not designated for growth, and thus will align the costs of constructing extensions with State policies on where development should and should not occur. Moreover, the rules will help facilitate development in appropriate areas by ensuring that adequate service provided by regulated entities is available to developers and customers.

24. COMMENT: The proposed new practice will violate the Board's stated policy in favor of State-wide rate averaging. In the 1996 and 1998 New Jersey-American rate cases, the Board strongly supported a move to State-wide average rates as properly conserving resources and fairly spreading the cost of utility facilities over

all users. Rates for electric, gas and telecom customers have always been based upon State-wide cost of service analysis; thus, State-wide average rates. The present rule proposals go 180 degrees in the other direction favoring pockets of customers to the detriment of others. This is spot rate-making, akin to spot zoning. Surely when aging inner-city utility infrastructure needs replacing, the Board will not call upon only customers in growth areas to replace it. Rather, that infrastructure will be upgraded as part of the average system costs to be paid by all customers. (NJBA)

RESPONSE: The rules do not authorize regulated entities to charge higher rates to customers in areas not designated for growth. In fact, these rules do not address rates at all. Therefore, the Board's rules do not violate the Board's policy regarding the use of State-wide averaging.

25. COMMENT: N.J.S.A. 48:3-4 states that no public utility shall give "any undue or unreasonable preference or advantage to any person, locality or particular description of traffic, or subject any particular person, locality or particular description of traffic to any prejudice or disadvantage." Thus, utilities are obligated to provide service to all without undue preference to any person or locality. This cannot be squared with the Proposed Rules which give preferences to certain customers and to certain localities. If a public utility engages in preferential treatment, the Board is obligated to stop it, and the Board itself cannot direct such improper behavior. While under the current rules some customers paid more for service extensions than others, they did so under a uniform set of rules designed to address an utility issue, cross-subsidization, not a societal or land use problem. The Board is not endowed with authority regarding land use planning or permitting; nor authority to enact income transfers to promote preferred land use practices. Such practices are forbidden because they create undue preferences and because they are beyond the ken of the utility regulator. (NJBA) (UTCNJ)

RESPONSE: In addition to the provision cited by the commenter, the Board's enabling statutory authority also sets certain thresholds beyond which an extension is not necessary (see N.J.S.A. 48:2-27), and mandates that the Board ensure that utility service is provided in a way that conserves and protects the environment (see N.J.S.A. 48:2-23). Therefore, the Board must balance all of these considerations and exercise its judgment in carrying out its statutory mandates. The State Plan represents the official State policy for guiding development in ways that are essential to protection of the environment, and therefore the State Plan is an appropriate guide to the Board in implementing its responsibilities under N.J.S.A. 48:2-23. Furthermore, the State Planning Act mandates that the State Plan "serve as an instrument of State policy to guide State agencies and local government in the exercise of governmental powers regarding planning, infrastructure and other public actions and initiatives that affect and support economic growth and development in the State. The rules do not forbid a regulated entity from providing extensions to areas not designated for growth. Instead, the Board is regulating who shall pay for the extension of service. The Board is confident it has sufficient authority to promulgate and implement the rules.

26. COMMENT: The proposed amendments and new rule support the goals of smart growth and will be effective in inhibiting sprawl into areas the State plan has designated as inappropriate for growth. These rules are well within the Board of Public Utilities' statutory authority, found at *N.J.S.A.*48:2-13. Additionally, the proposed amendments and new rule not only conform with, but are required by Governor McGreevey's Executive Order #4, issued on January 31, 2002. (CTCC)
RESPONSE: The Board appreciates this comment in support of the rules.

27. COMMENT: The rules provide incentives for utilities to expand and upgrade the utility infrastructure necessary to promote and accommodate development in targeted growth areas. However, the proposed rules also penalize developers and property owners locating infrastructure in areas not designated for growth. The use of penalties, while well-intentioned, will only serve to increase the cost of housing, and alter the competitive playing field. (SJG)
RESPONSE: The Board's rules do not contain penalties for developers or property owners. Instead the rules will, over time, require developers in areas of the State not designated for growth to bear the cost of extending utility or cable service.

28. COMMENT: We support adherence to "smart growth" principles that stimulate market demand, promote efficiencies in infrastructure and that anticipate and accommodate development needs, balanced with essential natural resource preservation. Our support of smart growth principles recognizes the right to freedom of mobility and acknowledges that growth is necessary and desirable to accommodate natural population increase, replace obsolete structures and to accommodate immigration from abroad. This freedom of mobility must be accompanied by a range of choices for living and working environments. Thus, choices for investment must be made available throughout the State that will result in attractive and livable communities. (NAIOP)
RESPONSE: The Board appreciates this comment in support of the rules.

29. COMMENT: Pursuant to *N.J.S.A.* 48:2-13(a), the Board has jurisdiction over all public utilities, which are defined as "every individual, copartnership, association, corporation, or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns that now or hereafter may own, operate, manage, or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use." Thus, the Board has statutory authority to regulate public utilities (or as defined by these rules, regulated entities) in a manner consistent with statute and public policy goals. (CTCC)
RESPONSE: The Board appreciates this comment in support of the rules.

30. COMMENT: Executive Order #4 dictates the creation of a Smart Growth Policy Council, the members of which includes the President of the Board of Public Utilities, to ensure that State agencies incorporate smart growth ideas as well as

the State Plan into their regulatory goals. The penultimate paragraph of this order further states that, "agencies represented on the Council shall undertake a review of their respective spending programs and rules and regulations to ensure that their actions are consistent with the principles of smart growth and the State Plan...." In drafting the proposed amendments and new rule, the Board was merely complying with this mandate from the governor to incorporate smart growth principles into the rules governing public utilities. The Board fulfilled its compulsory duty by creating rules that incorporate smart growth principles such as preservation of open space and scenic resources, the strengthening of future development and directing it to communities that already exist using existing infrastructure, and ensuring the development decisions be made in a way that is fair, predictable, and cost-effective. See the New Jersey Department of Community Affairs Office of Smart Growth, *Smart Growth Principles* at http://www.nj.gov/dca/osg/smart/index.shtml. (CTCC)

RESPONSE: The Board appreciates this comment in support of the rules.

31. COMMENT: The proposed amendments and new rule promote smart growth principles by creating a consistent, consolidated, and clear set of rules that dictate when and under what circumstances public utilities may extend their infrastructure to serve new users. With administrative requirements that go no further than those required for sound financial record-keeping and explicit conditions regulating the location, capacity, and funding of utility extensions, the Board is attempting to ensure that development and redevelopment occurs only within the constraints of the State Plan. (CTCC)

RESPONSE: The Board appreciates this comment in support of the rules.

32. COMMENT: It is essential to note that these rules require a regulated entity to consider the State Plan and smart growth principles from the first stage of an extension application through to the financing, physical location, capacity, and end users of a particular extension. This requires utilities to undertake a comprehensive approach to planning extensions of service and take into consideration factors regarding growth in advance. For example, by prohibiting an extension to carry any more capacity than is necessary to serve an identified growth area, the proposed amendments and new rule are protecting existing ratepayers. If an extension has capacity beyond that immediately needed and the State Plan inhibits growth in the surrounding area, existing ratepayers are forced to absorb the cost of the additional capacity. Protection of consumers is sound public policy advanced by these rules. (CTCC)

RESPONSE: The Board appreciates this comment in support of the rules.

33. COMMENT: We question whether the proposed rules are the best way to deter expansion into areas not designated for growth. Developers are constructing homes that cost hundreds of thousands of dollars, and the prospect of having to invest in utility extensions may not be a deterrent to building these expensive projects in non-growth areas. There may be more direct ways to affect this process outside the scope of utility regulation, such as through land use and zoning

laws, that would be more appropriate and effective methods to implement the smart growth policy. (UW)
RESPONSE: The Board recognizes that its regulatory efforts are only one part of a many faceted State-wide approach necessary to achieve smart growth and to implement the State Plan. Other State agencies, particularly the Department of Environmental Protection, the Department of Community Affairs, and the Department of Transportation, all have important roles to play under their specific statutory authority to address smart growth issues. However, at a minimum, the Board must ensure that its rules do not work against smart growth. This rule will do that by ensuring that ratepayers do not subsidize utility or cable service to development that conflicts with the State Plan.

34. COMMENT: We commend the Board for its commitment to protecting New Jersey's natural resources by proposing new rules, and changes to the existing rules, regarding extensions of infrastructure. Placing a greater burden on those seeking to build in areas that are environmentally sensitive is sound public policy. The provision of safe, adequate and proper utility service should be extended to anyone who seeks it, but it can and should be done in a responsible manner and at a cost that properly reflects the needs and values of all New Jersey residents. The proposed rule changes will change the regulatory landscape and reverse the incentives that now exist to develop in non-Smart Growth areas, and provide new incentives to encourage development and redevelopment in designated growth areas. We look forward to reviewing the comments of other interested parties, and continuing the productive dialogue initiated by Board in this proceeding. We also look forward to working with all stakeholders to ensure that all residents and businesses benefit from the enhanced quality of life that rules should bring to New Jersey. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

35. COMMENT: Together, our three companies serve approximately a million customers in the natural gas business throughout this State. Our main objective is the provision of safe, reliable service at affordable rates. We provide a lifeline service to our customers, and it's imperative that we not only meet adequate supply of natural gas but that we can build and maintain a reliable infrastructure, based on sound engineering and operational principles. We fully support the State's Smart Growth Initiatives and we commend the Board for the work that they have done in drafting new rules that we believe go a long way towards meeting those goals of limited sprawl, promoting redevelopment and achieving smarter development in various areas of our State. And the proposed rules encourage partnership between communities and the Board and utilities with such innovative initiatives as the proposed TRIP mechanism. (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The Board appreciates this comment in support of the rules.

36. COMMENT: Any regulatory changes must be grounded in maintaining reliability. (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The Board agrees that reliability is of primary importance. However, reliability is only one component of the Board's statutory mandate. The

Board's rule is designed to meet all aspects of its statutory mandate, without sacrificing reliability.

37. COMMENT: These proposed rules are in furtherance of Governor McGreevey's Smart Growth initiatives. We commend the New Jersey Board of Public Utilities for its commitment to protect New Jersey's vital natural resources by modifying existing utility infrastructure line extension rules as well as proposing new ones. This steadfast commitment is evident in the proposed rules concerning parties wishing to build in areas that are environmentally sensitive. Furthermore, the proposed rules will ensure that safe, adequate and proper utility service is furnished in an environmentally responsible manner. One of the most significant threats to New Jersey's environment is sprawl development. Unfortunately, the existing rules have enabled such development. These proposed rules will change the regulatory landscape so as to cut back incentives to develop in non-smart growth areas and to encourage development in designated growth areas. We are confident that all New Jersey ratepayers will greatly benefit from the Board's proposed rules that seek to enhance the quality of life of all of our residents. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

38. COMMENT: Presently, the Board is in the process of considering the promulgation of service quality and reliability standards in an attempt to ensure that service is provided in a manner that protects safety and security, while taking into account cost effectiveness, industry practices, and the financial integrity of such regulated entities. However, if the Board adopts the proposed main extensions rules without substantive modifications, a regulated entity's ability to provide safe and reliable service, while balancing cost effectiveness, will be compromised. As a consequence, while both initiatives attempt to address critical areas regarding customer reliability and the promotion of smart growth policy goals, the regulated entity would not be able to satisfy the requirements of both which could result in the imposition of penalties. (PSE&G) (CPD)
RESPONSE: In order to ensure that the rules do not interfere with a regulated entity's ability to provide safe and reliable service, the Board has removed some of the more restrictive provisions on adoption.

39. COMMENT: The Legislature has explicitly conferred on various other agencies the responsibility for land use planning in New Jersey through the Municipal Land Use Law ("MLUL"), the County Planning Act, the State Planning Act, the Fair Housing Act, and various enabling statutes such as those for the Pinelands and the Meadowlands all of which authorize and limit State authority regarding land use planning. Where the Board is empowered to override those agencies, that authority is specifically identified by the Legislature. Where there is no such authorization, the Board may not use its powers to override or impair local zoning or planning decisions. By placing a different and greater burden on new customers who live outside of areas designated for growth, the Board interferes with local zoning and planning decisions and stunts the growth necessary to a thriving economy. New Jersey courts have consistently held that public utilities are not

allowed to use their regulatory powers to effectuate public policy land use objectives. (NJBA)
RESPONSE: The rules do not interfere with local zoning and planning decisions. The rules merely shift the sources of funding for extensions to align them with smart growth goals. Local officials are free to pursue planning for their communities as they see fit.

40. COMMENT: Rules which stifle growth anywhere in the State virtually guarantee that higher rates for all will result. The Proposed Rules place additional burdens on developers and customers who live outside areas designated for growth. Outside of areas PA-1 and PA-2 utilities will undersize their facilities, building to serve only one single development at a time. Proper utility planning, which is the Board's task, will yield in favor of temporal land use goals, which are not the proper job of the Board. (NJBA)
RESPONSE: The rules adopted herein are not intended to stifle growth. They are intended to ensure that ratepayers do not subsidize utility or cable service to growth that is inconsistent with the State Plan. This implements the mandate at N.J.S.A. 48:2-23 that the Board ensure that safe, adequate, and proper utility (or as defined by these rules, regulated entity) service is furnished in an environmentally responsible manner.

41. COMMENT: The Proposed Rules have the potential to impede the development of affordable housing outside of areas PA-1 and PA-2, and they contradict the spirit of the Supreme Court's efforts to ensure fair housing opportunities for all. Our State has focused considerable effort on promoting fair housing, not just in designated growth areas, but across our State. While the Proposed Rules provide incentives to developers to redevelop urban centers, customers outside areas designated for growth will subsidize utility installation costs, increasing the price of suburban homes. Municipalities must remove zoning and subdivision restrictions that are not necessary to protect health and safety, but the Board proposes to increase infrastructure costs and decrease housing opportunities. While the provision of decent housing for the poor is not a function of the Board; its role, at least, is to see to it that utility regulation does not prevent it, but rather enhances the opportunities for its construction as required by New Jersey's Constitution. The Proposed Rules ignore the past practices and new regulatory proposals of COAH, irrespective of the controversy in which they are embroiled. (NJBA)
RESPONSE: The Council on Affordable Housing's (COAH's) re-proposed rules governing the provision of affordable housing, including the draft memorandum of understanding between it and the State Planning Commission, underscore the desirability of locating affordable housing in areas of the State designated for growth by the State Plan. The Board's rules support the regulatory approach undertake by COAH. As such, the Board's rules do not contradict the constitutional obligation to provide affordable housing.

42. COMMENT: In the economic impact statements presented in the proposed rules, what evidence supports the assertion that "smart growth has been shown to provide significant benefits to communities, regions and the State as a whole". The

economic impact statement refers to the very narrow population of the regulated utilities. There is no consideration given to individual property owners, municipalities and regions in the economic impact assessment. (ACRCOC)
RESPONSE: The New Jersey State Planning Act (N.J.S.A. 52:18A-196 et. seq.) requires that an Impact Assessment Study of a Draft Final State Plan be performed and the results of the study made available before adoption of a Final State Plan. The impact assessment of the current State Plan found that if the State Plan, and thus smart growth, were implemented, we would see "more development into existing and new centers and less development into rural and environmentally sensitive areas. This in turn, will attract income to and expand the tax base of communities with existing and new centers; save appreciable amounts of developable land; require provision of less road and water/sewer infrastructure; slow the increase in housing prices; and substantially reduce the need for expanded local public services in rural and environmentally sensitive areas." The assessment is available at: http://www.state.nj.us/dca/osg/plan/impact.shtml.

43. COMMENT: We ask that the economic impact analysis of these proposed rules that is required by law be conducted independently. The study should be made available for review prior to further movement and most certainly prior to adoption of the proposed rules. (ACRCOC)
RESPONSE: In developing these rules, the Board relied in part on the Impact Assessment Study referenced in the response to comment 42 above. The economic impact analysis of these rules was conducted in accordance with the requirements of the Administrative Procedures Act. The Board does not believe that additional economic impact study is needed.

44. COMMENT: Despite the hurdles to development in the Proposed Rules, the Board assumes that only the location and not the amount of growth will be changed. An evidentiary record should be made before the changes are enacted. (NJBA)
RESPONSE: Since the Board's rules do not change the overall costs of an extension but merely redistribute the burden of such costs in some areas, the Board does not anticipate that the rules will affect the amount of growth in New Jersey. In addition, as noted in the summary of the proposal, the Board's rules are only one factor in decision making by prospective developers and consumers of development.

45. COMMENT: In the "Jobs Impact" statement accompanying the proposed rules, the Board states, "…the anticipated cost to the developer for projects in the areas not designated for growth should not prevent the development from taking place." With this, the Board acknowledges that the proposed "stick" will not prevent development in areas not designated for growth. At the same time, it is a certainty that the "stick" will increase the cost of housing and development and provide a competitive advantage to non-utility purveyors. As a result, it appears that even in the strictest application, the proposed rules will not achieve their intended purpose. (SJG) (PSE&G)

RESPONSE: The Board recognizes that its regulatory efforts are only one part of a many faceted State-wide approach necessary to achieve smart growth and to implement the State Plan. Other State agencies, particularly the Department of Environmental Protection, the Department of Community Affairs, and the Department of Transportation, all have important roles to play under their specific statutory authority to address smart growth issues. However, at a minimum, the Board must ensure that its rules do not work against smart growth. This rule will do that by ensuring that ratepayers do not subsidize utility or cable service to development that conflicts with the State Plan.

46. COMMENT: The proposal will have effects on the cost of service related to underground extensions. Currently the underground rules provide in general that high-capacity electric distribution facilities of greater than 4 MVA may be made overhead. It is not at all clear the nexus to smart growth behind the proposed rules change to require that these distribution facilities be placed underground. This requirement if not modified will significantly increase the cost to customers. Under the current rules we would serve an extension in a new subdivision by utilizing available overhead facilities and begin to underground the facilities at the point of entry of the subdivision. If this proposed section is not modified we would be required to extend service to the subdivision with underground facilities where perfectly good overhead facilities are available. As you can imagine the time, expense--approximately 10 times more expensive--and public inconvenience that would be created by excavating the roads and placing facilities underground will significantly impact customers. (PSE&G)
RESPONSE: The undergrounding provisions of the original proposal at 14:3-8.4 have been deleted and are reproposed with major changes in this issue of the New Jersey Register.

47. COMMENT: Our mutual goal of advancing smart growth principles can be accomplished very simply and would avoid the unintended consequences embedded in the current proposed rule. This alternative concept rests on the notion that public policy change is best accomplished by willing participants. Much of what is intended in the proposed rule can be accomplished by providing financial incentives that are simple to administer and would not interfere with the design and operation of the electric and gas infrastructure. The general recommended concept is to directly provide builders and developers an up-front incentive for development in targeted growth areas. A Utility Infrastructure Incentive (UII) would be paid to developers on a dollar per unit basis for residential dwellings, or dollar per design peak unit for commercial and industrial end-uses. These incentives would attract development to the targeted growth areas. While we prefer an incentive based program, up-front payments could also be required from builders and developers to act as a deterrent to growth in other areas. We would be happy to work with the Commission to fashion a smart growth program that meets our mutual needs and addresses smart growth principles. (PSE&G)
RESPONSE: The rules are largely incentive based, in that developers will receive incentives in the form of faster return of their deposits in areas designated for growth. In addition, a cross reference to the Board's rules providing for Board

approval of a waiver has been added upon adoption. As provided for under N.J.A.C. 14:3-8.1A(a), if a regulated entity believes that it can achieve the intent and purposes of these rules through some alternative method, the regulated entity is free to submit a petition for waiver under the Board's existing rules. The Board plans to adopt additional rules in the future providing for a system somewhat like that envisioned by the commenter. The rules will likely require per-unit payments to a regulated entity that provides an extension serving an area not designated for growth, in order to cover costs of common plant that is shared by customers in growth and non-growth areas.

48. COMMENT: We support the Board's goal to reflect the State's smart growth policies and provide incentives for development and redevelopment in areas designated for growth. The proposed rules are also designed to discourage development in areas designated for preservation and protection. Development in areas designated for growth can be encouraged by reducing the cost for developers to bring gas and electric service into a new development and providing incentives for investments in new or expanded public utility infrastructure targeting those designated "growth" areas. Also an attempt can be made to proactively deter development in areas not designated for growth. The Board's proposed rules appear to combine both elements. (CPD)
RESPONSE: The Board appreciates this comment in support of the rules.

49. COMMENT: We are generally supportive of the Board's objective to promote smart growth and have development built in areas supported by the State Plan. We have been working with the Board and Staff to develop guidelines that promote the State Plan yet are fair and provide incentives to both developers and utilities to build in designated areas. (NJA, ET, MHWC)
RESPONSE: The Board appreciates this comment in support of the rules.

50. COMMENT: There are many public benefits to addressing sprawl development and encouraging the redevelopment of older, more urbanized areas of the State, and the Governor and the Board should be commended for making smart growth a public policy priority. While supporting the overall intent and some specific provisions of the proposed rules, however, we caution that certain provisions may have unintended consequences that could impact reliability and/or raise rates for all ratepayers. We believe that these unintended consequences can be traced almost entirely to provisions that impose added costs or various outright prohibitions in "non-growth" areas. (CPD)
RESPONSE: The Board appreciates this comment in support of the rules. Clarifications have been added to the rules upon adoption to ensure that the rules do not interfere with a regulated entity's need to size an extension to be consistent with its current system design standards, and with industry best practices. See N.J.A.C. 14:3-8.3(d) and (e).

51. COMMENT: Existing smart growth policies (Pinelands, CAFRA) already restrict our service territory. Limits on our ability to add new electric delivery customers could result in reduced development prospects for our service territory, and could

have a disproportionate impact on the Southern New Jersey region. Therefore, we support proposals that provide the tools to reduce the cost to developers in designated growth areas, as an incentive to development and redevelopment in these areas. However, the proposed changes in the deposit and refund rules and formulae (14:3-8.6) that would be applicable in areas not designated for growth would impact the ability of many middle income families to afford the home of their dreams. The continued growth of the economy in South Jersey is required to maintain and improve the standard of living for all residents. The proposed rules would likely increase the overall cost of constructing housing and commercial buildings. Higher costs would have a greater impact on South Jersey because it is has the most developable land and lowest incomes. It could also lead indirectly to higher utility rates over time from a static number of customers. (CPD) (ETG) (NJNG) (PSE&G) (SJG)

RESPONSE: Based on the State Plan Impact Assessment referenced in the response to comment 42 above, the Board believes that the economic benefits to the State of smart growth will be substantial. Therefore, the Board believes that it is appropriate for those choosing to develop in areas not designated for growth to bear the full cost of infrastructure needed to serve that development. Regarding incentive based programs, please see the response to comment 47 above.

52. COMMENT: We reiterate our commitment to work with the Board and its staff to continue the dialogue, through a stakeholder process, to fashion a rule, which is complimentary with smart growth policy and our mutual desire for the provision of reliable and reasonably priced energy service to the residents and businesses of New Jersey. We believe this can be accomplished without disturbing the competitive position of fuel sources available in the marketplace or the environmental impact of these fuels. We suggest that the Board establish working groups, much the same way as it recently did with the consumer report card. (ETG) (NJNG) (PSE&G) (SJG) (CPD) (NJA, ETW, MHWA) (VNJ) (UW)

RESPONSE: A number of working groups and stakeholder meetings have already been held to ensure that the rules accomplish their goals. The Board anticipates additional rulemaking to address the allocation of costs for construction of common plant serving both growth and non-growth areas. The Board welcomes the commenters' participation in this and other future rulemakings.

53. COMMENT: The proposal of these rules creates the appearance that rather than engage in an inclusive open policy discussion, State agencies have evaluated their regulatory authority and are proposing rules and regulations aimed at implementing Smart Growth principles. This approach circumvents the lively but constructive dialogue that allows all parties to be heard in developing initiatives with such broad public impact. (ACRCOC)

RESPONSE: In addition to following the letter and spirit of the Administrative Procedures Act in promulgating the rules, the Board has conducted extensive stakeholder outreach, before as well as after proposal of the rules. The Board has conducted extensive stakeholder outreach, before as well as after proposal of the rules. Prior to the proposal, the Board met with several groups of regulated entities to share draft language and solicit input. After receiving comments on the rule

proposal, the Board held six public stakeholder meetings to discuss the issues raised in the comments. Finally, immediately prior to finalizing this rule adoption, the Board distributed the draft adoption to stakeholders and accepted final comments. The public input gathered in all of these processes has been invaluable in the Board's efforts to develop a sound rule.

54. COMMENT: Adding customers results in spreading the fixed utility distribution system and overhead costs over more throughput, thereby keeping rates down for all customers. Moreover, increased throughput translates into higher collections from the per-kilowatt-hour Societal Benefits Charge (SBC), thereby generating additional funding towards societal programs including universal service and clean energy programs. Conversely, restricting growth will put upward pressure on system-wide delivery rates and will decrease societal program funding relative to what would otherwise have been the case. (CPD)
RESPONSE: The Board does not believe that these rules will affect the number of regulated entity customers in the State, although the rules may affect the location of some customers. However, the rules are primarily designed to prevent ratepayer subsidization of infrastructure serving development that is located in areas not designated for growth.

55. COMMENT: The rules provide incentives for development in growth areas by making extensions more feasible in those regions. Amendments requiring smaller deposits and faster refunds for extensions in growth areas as well as those prohibiting the financial contribution of regulated utilities to extensions into areas not designated for growth provide logical economic incentives to developers, for whom cost is an essential aspect of a decision to build. Because, in many areas, the availability of public utilities is fundamental to both residential and non-residential growth, the increased cost of these services in areas not designated for such growth can become prohibitive, thus requiring developers to adhere to the parameters of the State plan. (CTCC)
RESPONSE: The Board appreciates this comment in support of the rules.

56. COMMENT: This Board, under the leadership of Jeanne Fox, has made reliability of utility service a cornerstone of its policy agenda. And we could not more strongly support that initiative. We are pleased to help the Board achieve that goal and we are hopeful that it will include an examination of the challenges utilities face in providing service. (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The Board appreciates this comment in support of the rules.

57. COMMENT: Natural gas is the most environmentally friendly fossil fuel. However, prospective customers or builders need not choose natural gas for their heating or hot water heating. Rather they can select alternative sources like oil, propane or electric fuel for their home or commercial businesses. This proposal would encourage the use of non-regulated oil and propane heat by builders as a cost avoidance measure. As a result, the aims of this proposal would not be achieved, that is, building in non-smart growth areas would continue and environmentally risky oil tanks could proliferate. Alternatively, a builder or

customer may choose to go with electric heat to avoid paying the additional infrastructure cost twice. As a result, the grid would likely experience an increased demand that we do not believe the Board is seeking. Natural gas service does not create demand, it responds to demand. This action, as well, provides a competitive advantage to heating oil over natural gas and will lead to an increase in imported crude oil, at a time when the Board and the McGreevey Administration is sponsoring clean energy and clean cars initiatives intended in part to reduce dependence on imported energy. From an environmental perspective it should also be mentioned that combustion of natural gas in a residential or commercial boiler results in lower local air emissions than does combustion of fuel oil for the same purpose. We believe the proposal, which requires consumers to pay in advance for natural gas utility service, should once again be considered. (ETG) (NJNG) (PSE&G) (SJG) (COCSJ) (NJA, ETW, MHWA) (ACRCOC)

RESPONSE: The State Plan recognizes that the causes of sprawl are myriad. Almost every actor, both private and public, may point to another as a more significant cause of sprawl. But the causes of sprawl are sufficiently complex that the relative impact of each actor is impossible to accurately quantify. In addition, every citizen of the State has an obligation to do their part to preserve our State and its resources for future generations. Therefore, the Board believes that it will best serve the goals of these rules by including all regulated entities. To minimize the substitution of cheaper but less environmentally friendly fuels with which the commenters are concerned, the Board is proposing elsewhere in this issue of the New Jersey Register an amendment to these rules, exempting extensions for the purpose of conversions to natural gas to replace appliances that are powered by other sources.

58. COMMENT: We support the Board's initiative to adopt more favorable terms for extensions in areas designated for growth, in order to promote the State's smart growth initiative. However, we believe that the existing formulae and policies should be maintained for development outside the smart growth-targeted areas. (CPD) (ETG) (NJNG) (PSE&G) (SJG)

RESPONSE: The Board believes that the new rules are the best way to achieve smart growth and that the existing formulae and policies should not be maintained because they provide for a mechanism to recoup costs by individuals or developers in areas not designated for growth. The purpose of the rule is to end the pattern of subsidizing growth in areas where it has been determined that growth should not occur.

59. COMMENT: These proposed amendments and new rules should be adopted with the incorporation of minor changes. They support imperative smart growth goals and promote the use of the State Plan in development decisions. This proposal is consistent with both the Board's mandate to incorporate these principles into its regulatory scheme under Governor McGreevey's Executive Order #4 as well as being soundly within the Board's jurisdiction. (CTCC)

RESPONSE: The Board appreciates this comment in support of the rules.

60. COMMENT: Developer main extensions, after the 10-year period, are eventually transferred to Contributions in Aid of Construction (CIAC) and sit on our balance sheet at that amount until the plant is no longer in service. We would like to see the Board adopt the NARUC Uniform System of Accounts, which allows for the amortization of this CIAC. The amortization of CIAC, which would be a credit to the income statement, would be offset by the debit to the income statement for the associated depreciation, with no bottom line impact. Currently we do not depreciate the CIAC related plant and we do not amortize the CIAC, they both sit there unchanged. (ANJ)
RESPONSE: The Board does not believe that this rulemaking is the appropriate forum in which to address this issue. The Board's rules do not modify the Board's current accounting treatment of Contributions in Aid of Construction (CIAC). This is a complex issue that affects many other aspects of the Board's operations, and which requires careful thought. Further, it is not necessary to resolve this issue in order to ensure that these rules are fair and effective.

61. COMMENT: The proposed Extension Rules assess the same level of disincentives on potential growth in Planning Area 3 as are applied to Planning Areas 4 and 5. In the State Plan for Development and Redevelopment, Planning Area 3 is considered a transition area to provide a buffer between the urban and suburban areas of Planning Areas 1 and 2 and the rural and environmentally sensitive areas of Planning Areas 4 and 5. In Ocean County alone there are several designated centers and existing communities that are in Planning Area 3. Any redevelopment or expansion of what occurs in that town would not be allowed under the current rule. Economic development in certain established communities located in Planning Area 3 will be stifled. Businesses will not be encouraged to return to already developed downtown areas located in Planning Area 3, increasing the location of business activities in large shopping malls and corporate parks. It is therefore our recommendation that the Board redefine Planning Area 3 as a transition area to be consistent with the New Jersey plan and to avoid any negative unintended consequences. We suggest that the existing main and service extension requirements for this area be retained, which would not result in shifting of costs to other customers. After experience is gained under the proposed rules and the State-wide response to Smart Growth activities, the overall impact on growth can be evaluated to determine whether changes to any of the rules applicable to the different planning areas are necessary, including those that apply to Planning Area 3. (SJG) (NJNG) (NJA, ETW, MHWA) (COCSJ)
RESPONSE: According to the State Development and Redevelopment Plan, any development in an area designated as Planning Area 3 should be located in designated centers or areas with endorsed plans. The Board's rules are consistent with this, and provide for incentives only for development in Planning Area 3 that occurs in designated centers and endorsed plan areas.

62. COMMENT: A new subsection should be added to the rules that establishes the basic duty to provide service at 14:3-3.1(c), to clarify and resolve the inherent tension between these proposed rules and the duty to provide service, as follows:
<u>The duty set forth in 14:3-3.1(a) shall not be interpreted to require an extension of</u>

utility services in contravention of the requirements of N.J.A.C. 14:3-8.1 et al. (CPD)
RESPONSE: Upon adoption, the Board has added N.J.A.C. 14:3-8.1(l) to clarify that these rules are not intended to require a regulated entity to furnish an extension that would not be required under the Board's statutory authority.

63. COMMENT: A new subsection should be added at 14:3-3.5(c) to clarify that failure of a prospective customer or developer to meet the requirements of the proposed rules is valid grounds for refusing to connect, as follows: A utility may refuse to connect with any customer's installation (including a developer's installation) when the customer (including a developer) has failed to meet the requirements of N.J.A.C. 14:3-8.1 et al. (CPD)
RESPONSE: The suggested change is not necessary. N.J.A.C. 14:3-3.5(a) states that "[a] utility may refuse to connect with any customer's installation when it is not in accordance with the standard terms and conditions of the tariff of the utility furnishing the service, which has been filed with and approved by the Board, and with the provisions of applicable governmental requirements." This provides sufficient protection for regulated entities to refuse connection to a customer or developer that is not in compliance with the rules being adopted herein.

CHAPTER 3 ALL UTILITIES

SUBCHAPTER 1. DEFINITIONS

14:3-1.1 Definitions

64. COMMENT: This subchapter is proposed to be amended by the addition of two definitions to N.J.A.C. 14:3-1.1: "regulated entity" and "regulated service." We take no exception to these proposed amendments. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

65. COMMENT: The proposal must be clarified to expressly include sewer extensions. N.J.S.A. 48:2-13 gives the Board jurisdiction over sewer connections. (CTCC)
RESPONSE: The Board's rules cover all regulated entities, see the definition at 14:3-1.1. Therefore where sewers are regulated by the Board, they will be subject to these rules.

SUBCHAPTER 6 RECORDS

14:3-6.2 Plant and operating

66. COMMENT: The administrative and record-keeping requirements to track different types of new facilities, including whether they serve growth or non-growth areas or both, and to comply with the associated cost recovery and refund rules are burdensome. They will require substantial, costly modifications to the utilities'

(regulated entities') information technology systems that will take considerable time to develop and implement. Moreover, appropriate mechanisms for recovery of these administrative costs must be developed which will impose additional costs on customers. The required records would need to be tied to every subdivision, lot and building or structure, broken down by residential and non-residential, and by designated growth and non-growth areas. In addition, we would be required to set-up differing deposit and refund formulae mechanisms (14:3-8.5 through 8.12), and then implement these varying procedures for each new development. These new administrative and record-keeping requirements would require substantial modifications to many of our information technology systems that are currently not set-up to track and report service and main extension construction activities in this manner. Utilities will incur additional O&M expenditures for excessive bookkeeping and reporting including: refunding agreements on an individual customer basis for 10-years; tracking/reporting zoning changes and requirements in each town; and tracking/reporting of new services installed, number of customers, residential, office and retail space. These changes will add additional costs to customers and require time to implement. It will take more time than envisioned in the proposed rule to re-design systems and develop record-keeping procedures to comply. Also, the proposed rule provides no mechanism for us to recover direct and ancillary costs associated with compliance. Without the funding necessary to provide adequate resources to complete these tasks, we would have to divert existing resources away from other necessary activities. As such, we request that some mechanism be provided by the Board for the timely recovery of costs incurred to comply with the final rules. (CPD) (JCP&L) (PSE&G) (SJG) (CPD)

RESPONSE: Board staff has reviewed information from regulated entities regarding the basis for the belief that massive recordkeeping will be needed to comply with the rules. While the Board believes that the commenters' exaggerate the likely cost of compliance with the rules, the rules have been modified on adoption at N.J.A.C. 14:3-8.1(g) to provide more time for regulated entity compliance. However, sufficient recordkeeping requirements are necessary to enable the Board and the regulated entities to implement and evaluate the TRIP pilot project. Recovery of costs is beyond the scope of these rules.

67. COMMENT: An alternative that would reduce the costs of the new administrative and record-keeping requirements would be a broad-based Board initiative which would encourage the utilization of internet-based customer technology self service solutions. This type of technology solution will minimize redundant paper work between the utilities, the Board, customers/developers, and municipalities. We recommend that the Board work with the utilities and other stakeholders to develop a "Smart Growth" website. This will eliminate the need for utilities to modify their systems while at the same time ensuring cost effective and consistent data collection for the Board and other stakeholders. (CPD)

RESPONSE: The Board would be happy to meet with the commenter and other stakeholders to explore the potential for reducing redundancy and paperwork for regulated entities as well as the Board.

68. COMMENT: The regulations impose administrative and recordkeeping requirements regarding the types of new facilities deployed, whether the facilities serve growth or no growth areas, and onerous cost recovery and refund rules that are unduly burdensome. At a minimum, these provisions would require a CLEC to develop a new data tracking system. CLECs, unlike rate of return regulated utilities, cannot take advantage of the regulations' suggested recourse to address these costs. The administrative and record keeping costs should be minimized by permitting each CLEC to submit for Board approval, the CLEC's proposed Smart Growth administration and record keeping recommendations that are consistent with the CLEC's current business practices. (ATT)
RESPONSE: The success of a new initiative like that reflected in these rules depends on the regulated entity and the Board being able to accurately monitor the effects of the rules. Therefore, good data collection and record keeping is essential. The Board believes that the record keeping required in the adopted rules is reasonable and will not have the major impacts the commenter envisions. However, a regulated entity is free to submit a request for a waiver from Board rules under N.J.A.C. 14:1-1.2. The mere submittal of such a request however, does not relieve the regulated entity from compliance with these rules during the pendency of the Board's review of the waiver request.

69. COMMENT: The information required at N.J.A.C. 14:3-6.2(d) through (g) will place additional record keeping requirements on the utility and provides no value to the operational integrity of a distribution system. Moreover, joint trench information is normally arranged between the respective parties. Cost information between respective parties is confidential and proprietary and, if it is collected by the Board, should not be in the public record and should be stricken from the tariff. (PSE&G)
RESPONSE: While the required information may not affect the operational integrity of a particular distribution system, the benefits of smart growth will accrue to regulated entities, their customers and ratepayers, and all citizens of the State. The information required is an essential part of the Board's program to prevent ratepayer subsidization of infrastructure to serve areas not designated for growth. N.J.A.C. 14:3-6.2(g)1 has been modified to address the commenter's concerns regarding the financial arrangements related to joint use of trenches.

70. COMMENT: Various amendments are proposed to N.J.A.C. 14:3-6.2 requiring each utility to keep detailed records of its expenditures on extensions to infrastructure. These records must be kept by Planning Area and must be made available to Board Staff for inspection upon request. These proposed amendments will allow the Board Staff to track how and where extensions are made in relation to areas designated for growth under the State Plan, and to determine if infrastructure investments comply with the proposed rules. We take no exception to these proposed amendments but note that these records should be made available to the Ratepayer Advocate as well as Board Staff within a reasonable amount of time upon request. (RPA)
RESPONSE: The rules do not require that all of this information be filed with the Board. If information is on file with the Board, the commenter would be entitled to

access to the information in accordance with the requirements of the Board's rules implementing the Open Public Records Act (OPRA), at N.J.A.C. 14:1-12.

71. COMMENT: Proposed N.J.A.C. 14:3-6.2(g)2, which requires the number of subdivisions, lots, and buildings, residential and non-residential, for which a service was requested, should be deleted. (ETG) (NJNG) (SJG)
RESPONSE: The success of a new initiative like that reflected in these rules depends on the regulated entity and the Board being able to accurately monitor the effects of the rules. Therefore, good data collection and record keeping is essential. The Board believes that the record keeping required in the adopted rules is reasonable.

72. COMMENT: The proposed rules will have a dramatic effect on regulated entities and ratepayers and on economic development in the State. The proposed rules expressly create incentives and disincentives for development by shifting the upfront costs of telephone services from our company – which until now has absorbed those costs – to real estate developers. The proposed rules require us to estimate extension costs, with developers depositing those costs upfront (no tariffs presently authorize this sort of cost-shifting, and a six-month period is typically required to develop this type of tariff), then calculate and return to the developers refunds over the course of up to ten years. We will have to evaluate each application to determine whether, or to what extent, an extension will serve smart growth or non-smart growth areas, estimate how much the extension will cost to build, and collect that amount from the developer. Then we will have to monitor the rate at which the cost is recovered from new customer revenues over as long as ten years and determine the appropriate rate at which to refund to the developer. We would be required to apply *different* formulas depending on whether the extension serves smart growth or non-smart growth areas and on whether the extension serves multi-family or single-family residences. In some cases, particularly where customers use competing service providers or substitute technologies to fulfill their telecommunications needs, we will not have the capability to determine the customer's actual revenue, and will only be able to rely on estimated revenue. These determinations will be complex and onerous. For example, a plant extension to serve a 1,500 unit development would require us to estimate each customer's annual revenue to determine the initial refund and to revise the refund each year thereafter based on each customer's actual revenue, for a maximum of 10 years. For this development alone, we would be required to produce 18,000 data points each year. Assuming the refund period ran the maximum 10 years, a minimum of 180,000 data points would have to be generated for this one development. Last year, we were involved with approximately 300 new developments. We will need to create an entirely new system to estimate costs, collect deposits, monitor service installation, and track revenue. The costs will be substantial and, in the case of extensions of service for only a small number of new customers, the administrative costs may well exceed the cost of the project. (UTCNJ) (VNJ) (UW) (NJA, ET, MHWC)

RESPONSE: While the Board recognizes that regulated entities will have to undertake some new administrative tasks under the rules, these requirements are necessary to enable regulated entities and the Board to accurately track implementation of and compliance with the rules. In addition, it is important for all New Jersey citizens and businesses to become familiar with the State Plan and to identify how their actions affect smart growth. The rules will likely cause regulated entities to incur some minor incidental costs pertaining to changes in their financial and accounting practices as well as some new reporting criteria.

SUBCHAPTER 8 EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.1 Scope and applicability

73. COMMENT: We suggest that these rules include the availability of conversion activities in any Planning Area. In areas where growth has already occurred and structures exist, regardless of which Planning Area these structures are in, customers should be allowed to convert from oil and electric heating systems to natural gas. This is existing building stock that is already there. The development is occurring, the roads are there, the schools have been built, and this would support the use of natural gas – an environmentally friendly fuel. (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The Board agrees that conversion of existing buildings from the use of other fuels to natural gas is consistent with smart growth goals. However, since this would be a substantive change in the rules, this change is included in additional amendments to these rules, proposed elsewhere in this issue of the New Jersey Register.

74. COMMENT: The Board's wish to differentiate charges in "growth" and "non-growth" areas runs afoul of federal requirements for the telephone industry. As an ILEC (incumbent local exchange carrier), we have an obligation to make elements of our system available to competitors, at prices which can not and do not vary based on whether the end-user customer is in a "growth" or "non-growth" area. There is no federal pricing exemption or qualifier for a rule that seeks to impose a Smart Growth initiative. (UTCNJ)
RESPONSE: The Board's new rules regulate only who pays for an extension of service that is requested by an applicant in order to serve new customers. The rules do not apply to an ILEC's existing system elements or to the charges that ILECs charge for use of existing elements. Therefore the rules do not conflict with Federal requirements.

75. COMMENT: The services provided by telecommunications carriers are primarily driven by changing technological advancements, rather than geographic sprawl. Unlike water, sewer, electric and natural gas industries, such advancements in the telecommunications industry continually create alternatives to traditional landline telephone services. ILECs and certain CLECs (competitive local exchange carriers) provide services that are dependent upon the end user (or developer) first obtaining an extension of service from other regulated entities – water, sewer,

natural gas or electric utilities. Development can occur without telephone service (or cable service), yet development will not occur without water, sewer, light and a source of heat. Our ILEC entity currently does not obtain deposits from the developer, but coordinates installation of its facilities with the power company through existing joint use agreements, under which our facilities are placed in the same construction corridor or right-of-way used by the power company, eliminating the need for separate facilities. When reviewing these proposed rules in light of the particular circumstances affecting the telephone industry, the Board will realize that "extension" rules for telephone infrastructure is not necessary or required for properly-implemented Smart Growth policies to succeed. (UTCNJ)
RESPONSE: Each regulated entity can point to other entities and claim that they have more influence on smart growth. The truth is that development patterns are influenced by a myriad of interrelating factors. The achievement of smart growth depends on all New Jerseyans cooperatively working together, each ensuring that their actions do not impede progress towards this goal.

76. COMMENT: Upgrades in telecommunications facilities are driven not just by new customers, but primarily by the demand for new technologies and services. As a result, the question is how to determine which upgrades to common telephone facilities are due to growth. The proposed rules deal with this issue in a broad-brush, generic manner by simply requiring each utility to develop "detailed records . . . to demonstrate compliance with this chapter to the Board." No known accounting system presently classifies telephone plant based upon such considerations. (UTCNJ)
RESPONSE: The rules have been modified upon adoption to clarify that they do not cover upgrades to existing plant. See N.J.A.C. 14:3-8.1(b).

77. COMMENT: In the first sentence of N.J.A.C. 14:3-8.1(a), the phrase "to new customers" should be added immediately after the word "extensions." In addition, a new provision should be added at N.J.A.C. 14:3-8.1(b), as follows: The subchapter does not apply to the construction of extensions to serve customers whose facilities are existing structures as defined at N.J.A.C. 14:3-8.2. While this subchapter does not apply to extensions for existing facilities as defined at N.J.A.C. 14:3-8.2, the methodology provided for in N.J.A.C. 14:3-8.7(c) shall be used for calculating the costs for providing such an extension. (ETG) (NJNG) (SJG)
RESPONSE: The Board believes that the definition of "extension" clearly includes only extensions to serve new customers, and that therefore the suggested additions would be redundant and could in fact cause confusion.

78. COMMENT: 14:3-8.1(b) does not include extension of electric transmission systems. Natural gas transmission mains serve exactly the same function as high-voltage electric transmission wires, creating an integrated delivery grid that supports the reliability of the entire system. Accordingly, natural gas transmission mains operating at or above 60 psig should be exempt from the proposed changes in the same manner as high voltage transmission facilities. (SJG) (NJNG) (NJA, ETW, MHWA) (PSE&G)

RESPONSE: The proposal excluded electric transmission lines because these lines are regulated by the Federal Energy Regulatory Commission (FERC) and the Board is therefore without jurisdiction to apply these rules to them. However, FERC also regulates large gas transmission lines and so the Board is also without jurisdiction over those. Therefore, N.J.A.C. 14:3-8.1(d)2 (found in the proposal at N.J.A.C. 14:3-8.1(b)2) has been modified upon adoption to specifically state that the rules do not apply to an extension regulated by FERC. In addition, definitions of "distribution," "electric distribution system", and "electric transmission system" are deleted upon adoption because they are no longer used in the rules.

79. COMMENT: N.J.A.C. 14:3-8.1(e): If the tariff conflicts with this subchapter, the regulated entity must submit a compliant tariff within 30 days. A number of information technology systems would require modifications over a considerable period of time and expense to meet the proposed rule requirements. We will not be able to develop and submit, and be in a position to implement the compliance tariffs, within a 30-day period. In addition, training will have to take place to adequately prepare the associates required to implement these tariffs and processes. At a minimum several months will be required to comply with this proposed rule. (PSE&G)
RESPONSE: N.J.A.C. 14:3-8.1A(b) has been added upon adoption to provide a 90 day delay in the operative date of the rules. This will provide additional time for regulated entities to prepare for implementation. However, the requirement at proposed at N.J.A.C. 14:3-8.1(e) (recodified upon adoption at N.J.A.C. 14:3-8.1B) that a regulated entity file a modified tariff within thirty days has not been modified. It is important that Board staff receive the modified tariffs well before the rules become operative. This will enable staff to review the proposed tariffs and work with the regulated entities to correct any problems prior to the operative date of the rules on March 20, 2005.

80. COMMENT: The last sentence of N.J.A.C. 14:3-8.1(e) is ambiguous and does not make clear whether the rule to grandfather existing less-burdensome tariff requirements on deposits and refunds applies only to designated growth areas. Additionally, the provision does not appear to recognize the fact that CIAC collections may not be in the form of a deposit that is refunded, but may be permanently retained by the utility. A revised sentence should read: If the regulated entity's existing tariff would have the regulated entity collect a smaller Contribution In Aid of Construction (CIAC), smaller deposit, or refund deposits faster, than this subsection would require, no modification is necessary under this subsection as applied to applicants requesting service to a designated growth area; however, modifications to such existing tariff would be required for application to applicants requesting service a area not designated for growth. (CPD)
RESPONSE: The cited provision (proposed at N.J.A.C. 14:3-8.1(e) but recodified upon adoption at N.J.A.C. 14:3-8.1B) has been clarified upon adoption. The sentence referred to by the commenter has been removed as redundant and confusing.

81. COMMENT: Clarification is needed as to whether and when developers will be responsible for paying for the cost of moving poles and transmission lines for road widening projects. Currently, developers reach agreements with the municipalities and utilities on how these improvements are to be paid for, which typically utilize a cost-sharing approach. The proposed rules could be construed to require that in areas not designated for growth, the cost of moving poles and lines in the context of a development project must be borne entirely by the developer. Such a requirement could have a dampening effect on developers' willingness to enter into arrangements to support otherwise beneficial road improvement projects as part of an overall development plan. We would be opposed to developers having to pay this full cost since these types of improvements typically are benefiting the greater community or region. (NAIOP)
RESPONSE: The Board's rules apply only to extensions requested by an applicant in order to serve new customers. See the definition of "extension" at N.J.A.C. 14:3-8.2. Therefore, if the requested extension requires moving of existing poles and transmission lines, then the costs would be governed by N.J.A.C. 14:3-8.6 and mostly likely the regulated entity would not be permitted to pay for the moving. However, the commenter's example involves movement of poles and transmission lines because of a road widening, not because of a request for service to new customers. In such a case the moving of poles and transmission lines would not meet the definition of an extension or the requirements of N.J.A.C. 14:3-8.1(b), and thus would not be subject to these rules.

14:3-8.2 Definitions

82. COMMENT: We fully support the definitions in N.J.A.C. 14:3-8.2 which use the State Plan Planning Areas 1 and 2 as well as centers and growth areas under plan endorsement (initial or final application) to define growth areas. It is wholly appropriate for State agencies like the Board to use the State Plan in its rule making when applicable and it is consistent with Governor McGreevey's Executive Order No. 4. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules.

83. COMMENT: N.J.A.C. 14:3-8.2 makes reference to the designated growth areas on the New Jersey State Planning Commission State Plan Policy Map. Utilities would be required to become familiar with this document. We question whether this map provides sufficient specificity as to whether a particular street is located in a growth or non-growth area. (UW)
RESPONSE: The State Plan Policy Map is detailed enough to show specific streets. In addition, the Office of State Planning is available to help answer specific questions concerning the map. See http://www.state.nj.us/dca/osg/.

84. COMMENT: The "center designation" or "designated center" definition has been amended in the State Planning Rules to specify that centers, cores, and nodes are designated as part of the plan endorsement process only. We suggest deleting reference to when and how a center will be designated, as follows: "Center

designation" or "designated center" means a center that has been officially recognized as such by the State Planning Commission in accordance with their rules at N.J.A.C. 5:85. *[The State Planning Commission may designate a center through the cross-acceptance process or as part of the plan endorsement process.]* (OSG)
RESPONSE: The Board takes note of the Commission's change from center designation to plan endorsement, and has incorporated this concept in the rules at N.J.A.C. 14:3-8.2.

85. COMMENT: A clarification must be made in the definition of "Cost," which would track language used in the current N.J.A.C. 14:3-8.2 relative to residential land developers and establish the principle for all extensions that "costs" include the income tax costs associated with a CIAC. While such language is incorporated at N.J.A.C. 14:3-8.9(d)(1), there is no basis for limiting its applicability to that subsection. Unless this definition is changed within N.J.A.C. 14:3-8.2, there will be a need to insert a similar sentence into each subsection where the word cost is used, i.e., "cost" should include CIAC tax costs, where applicable, in N.J.A.C. 14:3-8.3(d) and many other sections. In addition, while it strongly implied, it may be useful to be more explicit that the labor costs include both internal labor and external contractors. After the word "labor" insert the parenthetical "(including both internal and external labor)". At the end of the sentence, delete the period and insert "; Cost shall also include the federal and State tax consequences incurred by the regulated entity as a result of receiving a Contribution In Aid of Construction." (CPD)
RESPONSE: The commenter's suggested language regarding the cost of labor has been incorporated into the definition. In addition, new N.J.A.C. 14:3-8.5(c) clarifies that, when estimating or calculating the cost of an extension, the tax consequences shall be included.

86. COMMENT: The concept that to receive plan endorsement petitioners must complete an initial and final petition to receive State regulatory and funding benefits has been amended to allow petitioners the flexibility to decide which stage petitioners will submit a petition. We suggest that "final petition" be deleted and we suggest a grammatical correction for the "Designated growth area" definition, as follows: "Designated growth area" means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (*Metropolitan Planning Area (*PA-1)*)*;
2. Planning Area 2 (*Suburban Planning Area (*PA-2)*)*;
3. A designated center; or
4. An area identified for growth as a result of *[a final petition for]* either *an* initial or advanced *petition for* plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7. (OSG)

RESPONSE: The commenter's suggested changes to the definition have been made upon adoption. In addition, a cross reference has been added directing readers to the commenter's website address.

87. COMMENT: We support the Board's efforts to direct development to areas capable of supporting growth. However, the proposed amendments and new rules fail to include growth areas located in the Pinelands Area as designated growth areas. The State Plan Policy Map applies to all lands **except** mapped military installations, open waters, and **land under the jurisdiction of the Pinelands Commission** and of the Hackensack Meadowlands Development Commission. Consequently, areas that have been designated for growth under the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50 (i.e., Regional Growth Areas, Pinelands Villages and Pinelands Towns) are not referred to in the SDRP (State Development and Redevelopment Plan) or the State Plan Policy Map. The amendments and new rules would effectively treat growth areas in the Pinelands Area in the same manner as conservation oriented areas, despite the determination by the Pinelands Commission that growth is to be encouraged in these areas. Through a 1999 Memorandum of Agreement (MOA) between the New Jersey Pinelands Commission and the New Jersey State Planning Commission (SPC), all of the Pinelands Towns and Pinelands Villages and a few Regional Growth Areas have been recognized by the State Planning Commission as Centers. However, these designations are not recognized in the SDRP, on the State Plan Policy Map or in the Board's current rule proposal. Moreover, the Pinelands Centers designated in the MOA do not encompass all of the Regional Growth Areas located in the Pinelands Area. In addition, none of the Pinelands Management Areas have been designated as Planning Areas under the SDRP. The Pinelands Commission concerns would be addressed if the definitions of the terms "Designated growth area" and "Center designation", proposed at N.J.A.C. 14:3-8.2, were amended as follows:

"Center designation" or "designated center" means a center that has been officially recognized as such by the State Planning Commission in accordance with its rules at N.J.A.C. 5:85 **or in the June 1999 Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey State Planning Commission, or any subsequent amendments thereto**...

"Designated growth area" means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:
1. - 4. No change;
This definition also includes Pinelands Regional Growth Areas, Pinelands Villages and Pinelands Towns depicted on the Land Capability Map adopted by the Pinelands Commission as part of the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-5.23(a)24. (PC)

RESPONSE: The definitions have been revised to address the commenter's concerns. In addition, corresponding provisions have been added to the definition to accommodate similar existing planning designations made by the New Jersey Meadowlands Commission.

88. COMMENT: This definition should be added to the rules: "Existing facility or facilities" means any building or structure which existed or was permitted or approved for construction prior to the effective date of adoption of this subchapter. (ETG) (NJNG) (SJG)

RESPONSE: The term "existing facilities" is used in the adopted rules only to refer to existing infrastructure. Therefore, the definition suggested by the commenter would be inapposite.

89. COMMENT: The definition of "extension" should be modified in line with the existing definition at N.J.A.C. 14:3-8.1(b) to clarify that: "the term 'extension' shall not include the meter or transformer or any part of the house service connections, nor shall the cost of extension as referred to in these rules include the cost of fire hydrants or their branches." (CPD)
RESPONSE: The definition has been modified upon adoption to address the commenter's concerns. The adopted definition adds provisions to reflect the fact that each type of utility service varies in the components included in an extension. In addition, the substance of proposed N.J.A.C. 14:3-8.9(d)2, which specifies that an extension of water service does not include hydrants or their branches, is relocated in the definition of "extension." Also see the response to comment 90.

90. COMMENT: We propose the addition of a definition under N.J.A.C. 14:3-8.2 to differentiate service extensions on private property from line extensions on public streets or rights of way, as follows: "Service Extension" -- "That portion of an extension which is built on private property to serve one or more residential customers. In the case of commercial/industrial development, that portion of a line extension built on private property to serve one or more metered customers. A utility may elect to charge the full cost (including any CIAC tax costs) of a service extension if facilities greater than a service drop are required. Also excluded from this charge would be meters, transformers and regulators." (CPD)
RESPONSE: The commenter is correct that the Board's historical practice has been to exclude portions of infrastructure from refunds under the suggested formulae. Therefore, upon adoption the definition of "extension" has been clarified to indicate precisely what is included in an extension and what is not, for each different type of utility service. In addition, N.J.A.C. 14:3-8.9(g) and(h) have been added to clarify which portions of an extension are considered to be beyond standard service and thus would not refundable under the suggested formulae.

91. COMMENT: The definition of "extension" is confusing. Even though N.J.A.C. 14:3-8.1(b) precludes inclusion of extensions of the transmission system, the definition would appear to include the transmission system. "Electric Distribution System" is defined as facilities operating less than 69-kV. However, the definition would include both sub-transmission and transmission levels, as 69-kV and 26-kV are considered sub-transmission voltages. Interpretation of the provision would exclude 69-kV infrastructure from this tariff. This provision should be solely restricted to electric service to the customer's facility, service being defined as "the conductor from mainline distribution circuit to the customer's entrance equipment." (PSE&G)
RESPONSE: The definition of "extension," as proposed, includes transmission infrastructure. However, under N.J.A.C. 14:3-8.1(b)2, an extension regulated by FERC is not subject to the rules. In addition, these rules govern only extensions requested by an applicant (see clarification upon adoption at N.J.A.C. 14:3-8.1(b)).

92. COMMENT: The definition of "extension" should be clarified to specifically exclude system reinforcement work, which is due to general load growth, not related to any one customer's application for service. The definition of "Extension" should specifically exclude line extensions and service upgrades for pre-existing facilities. Failure to provide this exclusion could significantly impact the adaptive reuse of existing buildings and sites. (PSE&G)
RESPONSE: N.J.A.C. 14:4-8.1 has been clarified upon adoption to indicate that expansions and upgrades of existing plant and facilities are not covered by the cost-related provisions of the rules. The definition of "extension" includes only construction to provide service to new customers. Therefore, under N.J.A.C. 14:3-8.1(a) as proposed, expansions, upgrades and similar improvements are not subject to the rules governing financial contributions to extensions by regulated entities. After adoption of these rules, the Board does intend to propose additional rules to address expansions and other improvements.

93. COMMENT: The proposed rules contemplate revising the definition for "extension" (14:3-8.2) to reflect "the construction or installation of plant and/or facilities…..whether located on a public street or right of way, or on private property". We would propose that existing tariffs, which address private property service extensions and require the customer to pay the full cost (including any CIAC tax costs) of any such extensions on private property, continue in effect, regardless of their location in a growth or non-growth area. This existing tariff would be consistent with the intent of the Board's proposed rules and would achieve the Board's desired objective of protecting ratepayers from subsidizing growth. (CPD)
RESPONSE: The scheme advanced by the commenter would add complication to the rules, and it is not clear that it would provide benefits necessary to compensate for the added complexity.

94. COMMENT: In proposed N.J.A.C. 14:3-8.2, extension is defined as "the construction or installation of plant and/or facilities by a regulated entity to convey a regulated service from existing plant and/or facilities to one or more new customers, and also means the plant and/or facilities themselves." This definition should be clarified to state that new plants or facilities that are constructed to support growth are covered as well as existing plants and extensions of service from those locations. For example, the Board would have jurisdiction over a new sewer or water franchise that is provided by an on-site sewage treatment plant and an on-site water supply system. (CTCC)
RESPONSE: Please see the response to comment 95 below.

95. COMMENT: It is not clear in N.J.A.C. 14:3-8.2 what is meant by the term "Extension" as applied to on-site wastewater systems. A stand-alone water and wastewater utility infrastructure is not the usual extension of utility service that will "convey a regulated service from existing plant and/or facilities to one or more new customers." These systems are self-contained and cannot encourage sprawl. If our approach is precluded, homes could be built with individual wells and septic systems which require larger lot sizes; or facilities could be placed within the

responsibility of homeowner associations – which historically have had problems managing water and sewer systems. Ultimately, both the environment and the customer benefit from these systems. (AWMI)
RESPONSE: If an on-site water system obtains water from a utility subject to the jurisdiction of the Board, the extension that serves a new system would be covered by these rules, as it meets the definition of "extension." However, certain pipes leading to individual buildings would not be subject to the rules, in accordance with the adopted definition of "extension" as it applies to water infrastructure. If an onsite water system is supplied by a well, its original installation would not be subject to these rules, but if the system meets the definition of a public utility at N.J.S.A. 48:2-13, any future expansion of the system to serve additional customers would meet the definition of "extension" and would be subject. The same principles would apply to onsite sewage systems. If the system is free standing and does not require the extension of facilities from an existing regulated utility, the initial installation of the system would not be subject to these rules. However, if the system meets the definition of a public utility at N.J.S.A. 48:2-13, future expansions to serve additional customers would be subject. In addition, any other utility service (for example, electric service) that would serve the on-site system in an area not designated for growth would be an extension and would therefore be subject to these rules.

96. COMMENT: The term “Office of State Planning” should be replaced with “Office of Smart Growth,” as follows: *[“Office of State Planning” means the entity created by N.J.S.A. 52:18A-201, and its successor entities.]* *“Office of Smart Growth” means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as the Office of State Planning (N.J.S.A. 52:18A-201).* (OSG)
RESPONSE: The suggested change has been made throughout the rules.

97. COMMENT: Since the definition of the State Planning Commission is used to describe “Designated growth areas,” it should be defined. We suggest the following definition: *“New Jersey State Planning Commission” means the Commission established by the State Planning Act (N.J.S.A. 52:18A-196 et. seq.).* (OSG)
RESPONSE: The suggested definition has been added to the rules.

98. COMMENT: The State Planning Commission recently adopted their State Planning Rules, changing the reference of “Policy Objectives” to “planning policies.” The following language reflects those changes effective April 5, 2004: “Planning Area” has the meaning assigned to the term in the rules of the *State Planning Commission* *[Department of Community Affairs]* at N.J.A.C. 5:85-1.4. As of effective date of this rule, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level of development, or environmental sensitivity. The State Development and Redevelopment Plan sets forth *planning policies* *[Policy Objectives]* that *serve as the framework to* guide growth in the

context of those conditions. *[Planning areas are intended to guide the application of the Plan's Statewide Policies, as well as guiding local planning and decision on the location and scale of development within the planning Area.]* (OSG)
RESPONSE: The commenter's suggested changes to the definition have been made.

99. COMMENT: Our interpretation of "revenue," as used throughout the provision is that it is restricted to the distribution revenue portion of a customer's bill, which excludes all SBC and other adjustment charges, transition bond charges, commodity, BGS or BGSS, transmission billing components, transitional energy facilities assessment, and sales and use tax. A definition should be added for clarity. (PSE&G)
RESPONSE: Please see the response to comment 100 below.

100. COMMENT: Each use of the term "revenue" at N.J.A.C. 14:3-8.6(c) and (d), N.J.A.C. 14:3-8.10(d) and (e), N.J.A.C. 14:3-8.11(c) through (g), and N.J.A.C. 14:3-8.12(c)1 through 3, should be replaced with the phrase "estimated annual delivery revenue less related taxes, riders, surcharges and/or assessments" (ETG) (NJNG) (SJG)
RESPONSE: To resolve the confusion identified by the commenters, a definition of "distribution revenue" has been added upon adoption, and the term "revenue" has been changed to "distribution revenue" throughout N.J.A.C. 14:3-8. The definition is consistent with existing tariffs.

101. COMMENT: The provisions in the previous rules at N.J.A.C. 14:5-4.3 have been deleted, and do not appear in the revised language for extensions set forth in proposed N.J.A.C. 14:3-8. This is potentially a very significant deletion if it is not covered somewhere else in the rules due to the loss of rights by the utility. The current language is very specific as to how the utility should be granted easements at no cost, and without need for condemnation. It also requires the subdivision's applicant to clear and grade the easements, and maintain this condition throughout the construction period. These details need to be restored through the continued application of N.J.A.C. 14:5-4.3 or by adding the relevant sections to the proposed N.J.A.C. 14:3-8. (PSE&G)
RESPONSE: The substance of the previous provision (N.J.A.C. 14:5-4.3) appeared in the proposal at N.J.A.C. 14:3-8.3(c), and is adopted at the same location. The adopted provision requires the applicant to furnish the regulated entity with all necessary legal authority at no cost, or the regulated entity has no obligation to provide the extension. Regarding clearing and grading, the regulated entity can refuse to provide an extension if the applicant does not provide adequate site preparation, and an applicant in turn may petition the Board if it believes the regulated entity is not acting properly.

14:3-8.4 Requirement to put certain extensions underground

In the January 20, 2004 proposal, the Board intended to carry over, consolidate and clarify existing provisions regarding when it is necessary to put an extension underground instead of overhead. However, proposed N.J.A.C. 14:3-8.4 did not accomplish this and many commenters pointed out discrepancies between the proposal and the existing underground requirements. Therefore, the Board has not adopted N.J.A.C. 14:3-8.4 as proposed and has instead proposed new provisions elsewhere in this issue of the New Jersey Register. The comments received on the January 20, 2004 proposed version of N.J.A.C. 14:3-8.4 are briefly summarized in the proposal found elsewhere in this New Jersey Register.

14:3-8.6 Costs for extension serving an area not designated for growth

102. COMMENT: What happens if the utility constructs an extension based on a good-faith belief of the growth or non-growth status of a particular site that is later determined not to be the case? It appears that any construction in a non-growth area that is not paid for completely by the applicant would be forever excluded from plant investment for ratemaking purposes and thus, a utility would be precluded from ever earning a return on its investment to serve a customer. We propose that the Board provide an explicit exemption for construction costs financially contributed to in the good faith belief that a site was in a designated growth area. Additionally, unless the Board is willing to permit the regulated utility to discontinue service to a customer, if after construction of an extension it is determined that the extension was to a non-growth area, there are severe constitutional and statutory implications to the automatic and permanent prohibition against a return on investment to serve customers. In addition to the good-faith exception, we would propose an alternative that would establish a penalty for the extension in a non-growth area, which penalty would be a fixed dollar amount that is comparable to other penalties that the Board would impose for a violation of a rule rather than a permanent disallowance of a return on or of capital used to serve customers. (CPD)

RESPONSE: The State Plan Map provides street-by-street determinations of whether an area is designated for growth. In addition, the Office of Smart Growth will provide assistance in determining the State Plan status of any particular property in the State. Therefore, the situation envisioned by the commenter should virtually never arise. If it does, and a regulated entity can demonstrate a reasonable foundation for its erroneous identification of the State Plan status of a property, the regulated entity can petition the Board for a waiver of these rules under N.J.A.C. 14:1-1.2(b).

103. COMMENT: Sections 3-8.6(g) and 3-8.7(f) of the proposed rule prohibit a utility from providing service to customers in non-growth areas with plant and facilities located in growth areas. We currently use loop scheme design techniques to provide electric service in 50% of our service area. Loop schemes feed customers from varying points along the network, and improve reliability by making it possible to maintain service to a portion of the customer base even if other portions of loop are experiencing an interruption. If these provisions are not

eliminated loop schemes will not be utilized in many areas since plant and facilities located in growth areas are prohibited from providing service to customers in non-growth areas. (PSE&G)
RESPONSE: Please see the response to comment 111 below.

104. COMMENT: We and other utilities have adopted consistent equipment and system design standards that maximize customer value by standardizing on equipment sizing of transformers, cables, wire, and conductors. Standardized equipment specifications and design criteria allow for economies of scale that provide the lowest overall cost of service to customers. (PSE&G)
RESPONSE: Please see the response to comment 111 below.

105. COMMENT: Reliability would deteriorate under this proposal since the plant and facilities in growth areas could not be used to restore service to customers in the non-growth areas even on a temporary or emergency basis, and in some cases the rules would require the system to be segregated so that such use would be slower or even physically impossible. (SJG) (PSE&G) (NJNG) (NJA, ETW, MHWA) (CPD) (NAIOP) (JCP&L) (UW) (C) (VNJ)
RESPONSE: Please see the response to comment 111 below.

106. COMMENT: The proposed changes could deter system enhancements. As growth occurs within areas designated for growth, we may have to increase supply to that area from feeds outside of the growth areas or install an alternative feed to enhance reliability. These changes will be deterred under the proposed changes. With the installation of underground utilities, the cost is in the trench, not the pipe. The siting of utility facilities is increasingly difficult given existing environmental and other regulations. We are concerned that this regulatory proposal will have the unintended consequence of making that process still more difficult with the result that utility service reliability will be compromised. We have already, in other forums, cited the need for a review of the many regulatory processes which complicate, delay and increase costs of the installation of utility facilities. (SJG) (NJNG) (NJA, ETW, MHWA) (CPD) (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: Please see the response to comment 111 below.

107. COMMENT: 14:3-8.6(b)1-4. Because each of these subsections, standing alone, is enough to bar a regulated entity from paying for an extension, the multiple subparts operate to exclude extensions that are intended to be included. For example, subpart 8.6(b)4. bars a regulated entity's financial contribution for any extension not described in N.J.A.C. 14:3-8.7(b), and that subsection does not describe projects approved under the TRIP, which is described in N.J.A.C. 14:3-8.7(a) and 14-3-10. Additionally, subpart (b)(1) conflicts with N.J.A.C. 14:3-8.7 and other sections in that it would apparently ban the regulatory entity's paying for any extension across a non-growth area even if necessary to serve a growth area project which the regulatory entity is mandated to supply and pay for. In addition, N.J.A.C. 14:3-8.6(h) should be deleted as unnecessary and wasteful for the same reasons. (CPD)
RESPONSE: Please see the response to comment 111 below.

108. COMMENT: These proposed rules would require expansion of utility infrastructure in growth areas in an uneconomical manner, and would increase costs to customers and shareholders. Under current practices, prudent planning would provide for sizing infrastructure with somewhat larger capacity than required solely to serve the new development. Such planning practice is clearly prudent, as the incremental cost of increasing the size at the time of initial construction would be dwarfed by the cost impact of retro-fitting after the fact. Yet under the proposed rules, it appears that the utility would be precluded from including in rate base anything other than the cost of infrastructure sized to meet current demand. Moreover, if it turned out that the next development in fact came in an adjoining area not designated for growth, the utility could not connect the load associated with the next development. Rather, the utility would be required to construct a separate extension. But that would be a hardship on our relations with the towns and the county as far as re-excavating the roads, putting in new plant, redevelopment plant. The segregation called for in this proposal could result in parallel systems - one for Smart Growth areas and one for non-Smart Growth areas. In the long run, it will not benefit the customers or shareholders. (SJG) (PSE&G) (NJNG) (NJA, ETW, MHWA) (CPD) (NAIOP) (JCP&L) (UW) (C) (VNJ)
RESPONSE: Please see the response to comment 111 below.

109. COMMENT: N.J.A.C. 14:3-8.6(g) and 3-8.7(f) state that the facilities used for growth areas must be distinguished from those used for non-growth areas. A CLEC serving local customers using UNE-P facilities leased from the incumbent will not be impacted by this provision, since the CLEC has no control over the deployment of the incumbent's architecture. However, a CLEC that serves customers using some, or all, of its own facilities would be subject to this section of the regulations. For these facilities-based CLECs, enforcement of this provision will require deployment of infrastructure in areas of the state that would not necessarily be required to serve the area, as well as requiring investment in needless, excess capacity. For instance, due to advances in technology and the architecture a CLEC chooses to deploy, a CLEC can serve a much larger geographic area than is represented by the growth and no growth areas delineated within the State. The regulations would require infrastructure deployment on a much more concentrated basis. This is neither a reasonable planning approach nor a financially sound business practice in a competitive environment. Indeed, the duplication of facilities necessitated by these provisions could raise costs so high as to make providing local service over a CLEC's own facilities uneconomic. In sum, the regulations should not require CLECs to deploy facilities for use in providing local service to growth areas and separate facilities to provide local service to no growth areas. (ATT)
RESPONSE: Please see the response to comment 111 below.

110. COMMENT: 14:3-8.6, costs for extension serving an area not designated for growth, Section G discusses an extension that passes through an area not designated for growth, the regulated entity shall not subsequently allow customers in the area not designated for growth to connect to that line. While we understand

the intent, it is hard to understand compliance when, by statute, a regulated utility has an obligation to serve. (NJA, ET, MHWC) (PSE&G) (CPD)
RESPONSE: Please see the response to comment 111 below.

111. COMMENT: We fully support the provisions in N.J.A.C. 14:3-8.6(a) which phase out a utility's ability to pay for extensions servicing areas not designated for growth. Under the current regulatory system, ratepayers subsidize sprawl development. These proposed rules change this and properly place the financial burden of extending utility service on the developers wishing to build outside of growth areas as designated by the State Plan. (NJF)
RESPONSE: The goal of these rules is not to spur creation of segregated or parallel systems. The rules are intended to establish a comprehensive regulatory scheme that governs extension of service in a way that is consistent with the State Plan and that ends the traditional practice whereby all ratepayers contribute to the subsidization of new development. At the same time, the Board is aware that the rules must be designed such that regulated entities can practically comply with them, while also complying with the mandate to provide safe, adequate and proper service. In addition, input from stakeholders has clarified that it is virtually impossible to improve reliability without at least somewhat increasing the capacity available to a particular customer or development beyond the specific needs of that customer or development. Therefore, based on input from commenters and other stakeholders, the Board has determined that the capacity limits in proposed N.J.A.C. 14:3-8.6(g) and 3-8.7(f) may be impractical to implement and, more importantly, could hamper the provision of safe, adequate, and proper service, particularly in emergency situations. Therefore, N.J.A.C. 14:3-8.6(g) and 8.7(f) have not been adopted. In addition, to address issues of reliability and design, N.J.A.C. 14:3-8.3(d) has been clarified upon adoption and N.J.A.C. 14:3-8.3(e) has been added. To clarify, there are four increments of capacity addressed in the rules as adopted:

1. First, the amount of capacity the customers served by the extension will actually need and use, that is, their peak demand (for example, a typical residence's needs can be met with a 4 kv electric line);
2. Second, the amount of capacity the regulated entity must install in order to serve the customers in accordance with the regulated entity's basic system design and industry standards (for example, the regulated entity should not install a 4 kv line if their minimum standard size line is 13 kv);
3. Third, any additional amount of capacity that the regulated entity decides to install since they are working there anyway, to improve safety and/or reliability for existing customers in the area. This would be capacity that is above and beyond that required to serve the customer under the regulated entity's minimum design standards under item 2 above (for example, the regulated entity may install additional capacity to improve reliability in the neighborhood through looping); and
4. Fourth, additional amounts that the regulated entity may want to install (above and beyond that under items 2 or 3 above) to serve future possible development in the vicinity (for example, if there is undeveloped land just behind the applicant's development, which is owned by another developer).

The rules are intended to allow the regulated entity to install capacity as needed for any of the incremental amounts described above. In an area not designated for growth, the applicant would have to pay for the capacity they will use (item 1 above), as well as the capacity needed for the regulated entity to meet its minimum system design standards and industry standards (item 2 above). Further, in accordance with N.J.A.C. 14:3-8.5(f), in an area not designated for growth, the regulated entity could pay for, or could charge the applicant for, additional capacity to increase reliability for existing customers (item 3 above), and additional capacity to serve future development (item 4 above). However, if some or all of the additional capacity built for future development (item 4 above) serves an area not designated for growth, the Board would consider the prudence of this investment in future rate cases. These provisions ensure that in constructing and operating extensions, regulated entities use equipment, practices and designs that are consistent with industry best practices and standards; and which are consistent with the requirements of the regulated entity's current system design practices. The provisions will also allow regulated entities to install capacity as needed to ensure reliability, efficiency and economical operations. Regarding the statutory "obligation to serve", there is nothing in the rules that negates this. The rules will prohibit regulated entities from paying for certain extensions requested by applicants. However, regulated entities will not be prohibited from extending service, if an applicant pays for the extension. Regarding oversizing infrastructure to meet anticipated future needs, while the incremental cost of oversizing utility infrastructure may be lower in a specific instance, the overall costs to the State of sprawl development are very high and therefore the Board discourages oversizing of infrastructure. In addition to these rules, the Board is also planning a phase 2 smart growth rule, which will address the smart growth impacts of infrastructure that cannot be identified as directly serving a particular set of customers. The phase 2 smart growth rule will most likely address the costs of such infrastructure through a per-unit system development charge. While the Board acknowledges that these rules will require changes in utility planning and construction principles, the Board is confident that the changes can be accomplished without the adverse effects the commenters envision. As agencies and businesses around the State become familiar with the State Plan and the principles of smart growth, these rules will become just one component of a coordinated set of planning practices, rules, and standard procedures followed Statewide to achieve smart growth. Further, the benefits of the type of responsible development planning that this rule supports will fully compensate for any difficulties encountered in re-orienting regulated entities' planning practices to conform to smart growth principles.

112. COMMENT: We fully support the provisions in N.J.A.C. 14:3-8.6(b)3 which restrict a utility's ability to pay for the construction of excess capacity for utility service in areas not designated for growth. We realize that this is a contentious issue. We urge the Board not to amend this provision. Sound land use planning at the local and State level should control where development and utility service should go. Under the existing rules, too often development and growth follow

availability of utility service. This is contrary to the State Plan and its smart growth principals and will lead to further costly sprawl development. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules. However, based on the concerns described in the response to comment 107 above, the rules have been modified upon adoption to remove this prohibition. The Board is, however, planning a phase 2 smart growth rule, which will address the impacts of infrastructure that cannot be identified as directly serving a particular set of customers. The phase 2 smart growth rule will most likely address the costs of such infrastructure through a per-unit system development charge.

113. COMMENT: We fully support the provisions in N.J.A.C. 14:3-8.6(a) which phase out a utility's ability to pay for extensions servicing areas not designated for growth. Under the current regulatory system, ratepayers subsidize sprawl development. These proposed rules change this and properly place the financial burden of extending utility service on the developers wishing to build outside of growth areas as designated by the State Plan. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules.

114. COMMENT: N.J.A.C. 14:3-8.6. It will be cumbersome for utilities to track whether sections of a development may be in non-growth areas and to calculate contributions accordingly. This will be an additional step in the main extension process, requiring extensive review by utility engineers. If this rule is implemented, utility tariffs should be revised to require developers to certify whether the extension is in a growth or non-growth area and indemnify the utility for any errors in their assessment. (UW)
RESPONSE: It is not difficult to accurately determine whether a property is in an area designated for growth or not. (See the response to comment 83.) Therefore the certification suggested by the commenter is not necessary.

115. COMMENT: We urge the Board to phase out payments to service extensions in areas not designated for growth more quickly than provided for in the proposal. (NJCF)
RESPONSE: In developing the phase-out provisions, the Board has attempted to strike a balance between prompt action on smart growth goals and the legitimate needs of regulated entities for time to revise their practices and accounting systems to accommodate this change. The Board believes the schedule in the rules as proposed achieves this balance. Therefore, the suggested change has not been made.

116. COMMENT: In N.J.A.C. 14:3-8.6, for extensions in areas not designated for growth, the proposed rules phase out, over a 3-year period, the utility's authority to pay for or contribute to the cost of extensions (except for an extension covered by a TRIP, which is governed by new Subchapter 10). After the 3-year phase-out period, the utility is prohibited from paying for or contributing financially to an extension. This also means that the utility can no longer claim the cost of this infrastructure for ratemaking purposes, thereby reducing the revenue requirement to the general ratepayer body of the utility. The new rules are, therefore, designed

to eventually make the developer, business, or individual pick up the entire cost of construction of the necessary infrastructure to serve the development in the area not designated for growth. It places the entire financial burden for new utility lines serving new sprawl development on those who build the sprawl development, rather than on ratepayers and regulated entities. Thus, while the new rules will have a negative impact on the applicants for extensions of utility service for developments in areas not designated for growth, it will have a positive impact on the across-the-board ratepayers of the utility, due to a reduced growth in the utility's rate base. For all of these reasons, the Ratepayer Advocate supports the proposed new Subchapter 8 rules. (RPA)

RESPONSE: The Board appreciates this comment in support of the rules.

117. COMMENT: N.J.A.C. 14:3-8.6(c) and (d) are more generous than currently required with respect to non-residential individual customers and non-residential developers. Currently, those non-residential customers and developers may be required to provide a CIAC and they have no refund mechanism. Unless it is the Board's intent to create a refunding mechanism for such customers and developers operating in non-growth areas, we recommend that subparts (c)2. and (d)2. add at the end, "; provided, however, that unless otherwise provided for in a regulated entity's tariff, no such refunds are required with respect to non-residential customers or applicants developing land for non-residential purposes." (CPD)

RESPONSE: The rules have been clarified upon adoption at N.J.A.C. 14:3-8.9(g) to elucidate which portions of the deposit are refundable and which are not. Those which are not will constitute a contribution in aid of construction or CIAC, as noted by the commenter.

118. COMMENT: N.J.A.C. 14:3-8.6(f) must be amended to eliminate the word "maintain." It will be difficult enough under these proposed rules to determine today when the utility is to extend service without requiring a CIAC for the design and construction of a line versus when it is mandated that service be extended only when a CIAC is received. It would be entirely unworkable for a regulated entity to separate out in its books each year the costs of maintaining lines that it owns that were, perhaps decades earlier, constructed in a non-growth area using a CIAC. It would be virtually impossible to predetermine the lifetime cost of maintenance for such lines in order to comply with the requirement that the regulated entity "be paid in full in advance for the full cost (including any CIAC tax costs) of the extension." (CPD)

RESPONSE: The cited provision has been relocated upon adoption at N.J.A.C. 14:3-8.5(i). The provision does not require a regulated entity to do anything. It merely clarifies that a regulated entity is not prohibited from contracting with a person to construct an extension or perform related services. Therefore, the suggested change has not been made.

14:3-8.7 Costs for extension serving a designated growth area

119. COMMENT: In N.J.A.C. 14:3-8.7, for extensions in designated growth areas, the proposed rules generally provide that: (1) the utility bears the entire cost of the infrastructure or, under certain circumstances, may require a reduced level of deposits from applicants; or (2) the utility and applicant can come to an agreement on the costs distribution; or (3) the parties can use a cost sharing formula, either by petition to the Board or without Board intervention, that allows the applicant to receive deposit refunds from the utility in a much more accelerated fashion than is currently the case. The new rules for extensions in designated growth areas are, therefore, designed to ensure that applicants (developers, businesses, individuals) who build in designated growth areas will have to provide less (or no) money up front, while getting reimbursed for this upfront cost much faster than is the current practice. The new benefits accruing to the applicants of extensions in designated growth areas are essentially "funded" by – initially - the utility and – ultimately – the ratepayers. This is because the utility will end up with more rate base investment and lesser availability of Customer Advances (which are treated as rate base deductions). While the utility will initially bear the responsibility for these added costs, as soon as the Board allows these additional costs in rates, the ratepayers will ultimately be made responsible. Nevertheless, we support these proposed new rules regarding extensions in designated growth areas. We believe that these extra costs are well worth the societal benefits that would be derived from a migration back to inner cities and other older urban and suburban areas and away from sprawl development. However, these added costs will still be subject to regulatory scrutiny through the base rate case, and the utility bears the burden of proof regarding the reasonableness, prudence, and accuracy of the claimed program costs. Our support of the proposed new rules should not be construed as our "blanket" approval of all of these costs for ratemaking purposes. (RPA)
RESPONSE: The Board appreciates the commenter's support for the rules, and does not construe this support as a promise of future support of recovery of particular costs in a ratemaking context.

120. COMMENT: Clarification should be provided on the statement in proposed N.J.A.C. 14:3-8.7 that the utility should pay the entire cost of extension. A utility should be permitted to fund an extension within a growth area, but should not be generally required to do so without appropriate contribution from the developer or homeowner in accordance with the other sections of the rules. The Board should amend subpart (d) either to require a non-refundable CIAC (including taxes) from such non-residential customers and developers or to provide for deposits and refunds under an additional mechanism. (CPD) (UW)
RESPONSE: The rules have been clarified upon adoption at N.J.A.C. 14:3-8.9(g) to specify the portions of a deposit that would be refundable and those that would not.

121. COMMENT: Within designated growth areas, care must be taken so that the upfront deposit that is required for the full cost of the extension does not act as a deterrent to much needed smart growth development, even though a refund is provided at the time of the start of service. One way to ease this cash flow burden

is to allow the use of a bond. The rules should be modified to allow for this option. (NAIOP)

RESPONSE: The rules allow a regulated entity and applicant for an extension in an area designated for growth to make any mutually agreed upon arrangement for payment for the extension, which could include the use of a bond. The only limit on this is that, if the parties cannot agree, either party can petition the Board for application of the suggested formula.

122. COMMENT: In smart growth areas, these rules would impose costs on developers that they do not incur today and create the potential for developers to wait up to ten years to receive a full or partial refund, inadvertently undercutting the State's smart growth policies. We propose that the Board amend the rules to provide the option for regulated entities to use the formula in the proposed rules or waive developer deposits altogether in smart growth areas, a process in effect today. In non-smart growth areas, the Board could alternatively use a specific transition percentage of the project costs that developers would fund in lieu of applying the onerous proposed formula. Should the Board, nonetheless, require regulated entities to use the proposed formula, the monies deposited to cover administrative costs should be retained by the regulated entity and not refunded to the developer. (VNJ)

RESPONSE: The rules allow for the waiver of developer deposits in areas designated for growth. See N.J.A.C. 14:3-8.7(c) (proposed at N.J.A.C. 14:3-8.7(c)2). In areas not designated for growth, the rules do not apply the suggested formula. Rather, the applicant pays in advance for the extension in its entirety.

123. COMMENT: Neither incumbent nor CLEC should have exclusivity with respect to interconnection with other carriers or access to the property. The developer should be required to (a) notify all telecommunications carriers of the project prior to the commencement, and to (b) install telecommunications distribution facilities on behalf of any carrier that elects to have facilities constructed on its behalf as part of the project. If the incumbent does reap the benefit of receiving telecommunications facilities from the developer at "no cost" (either as the only electing telecommunications carrier or as one of multiple electing carriers), the Board should require the following.

- The incumbent must waive any rights under possible FCC exemptions to requirements that the incumbent provide unbundled access to the telecommunications facilities.
- The incumbent must continue its unbundling obligations under the 1996 Telecommunications Act and applicable FCC and BPU orders and regulations.
- The incumbent must lease the telecommunications facilities to CLECs at a reduced price to reflect the subsidy the incumbent obtained when acquiring the facilities.

(ATT)

RESPONSE: The commenter's suggestions are beyond the scope of these rules. The rules do not address the process by which a developer selects a regulated entity from which to request service. Rather, the rules address the distribution of

the cost of the extension between the applicant and the regulated entity, once the extension has been requested.

14:3-8.8 Exemptions from cost limits on areas not designated for growth

124. COMMENT: The first phrase in subpart 8.8(a) has redundant references to "the following." (CPD)
RESPONSE: The redundant phrase has been removed upon adoption.

125. COMMENT: In N.J.A.C. 14:3-8.8(a)(4), the cutoff date should be the effective date of the rule, which should include allowance for a reasonable time period following the adoption of the rules for adoption of the new tariffs. (UW)
RESPONSE: The suggested changes have been made upon adoption.

126. COMMENT: N.J.A.C. 14:3-8.8(c) should be deleted. The exemptions listed in 14:3-8.8(a) and (c) do not include maintenance on new extensions that serve customers in areas not designated for growth. This means that, not only will new customers in areas not designated for growth have to pay the full up-front cost associated with the installation of new utility facilities, but they would also have to pay for all ongoing maintenance on those new facilities. N.J.A.C. 14:3-8.8(c)2 is unclear in limiting the cost recovery of maintenance and repair that would allow an increase in the number of customers served while providing an exemption to this general rule for an increase in capacity of infrastructure. (CPD) (PSE&G) (ETG) (NJNG) (SJG)
RESPONSE: N.J.A.C. 14:3-8.8(c)2 has been deleted upon adoption because it was redundant and unnecessary. As proposed, the rules govern only construction of extensions (see N.J.A.C. 14:3-8.1). The definition of "extension" at N.J.A.C. 14:3-8.2 includes only new plant and facilities, constructed in response to a request for service. Therefore, there is no need for an exemption for maintenance and repair (since these things would not be governed by the rule) and N.J.A.C. 14:3-8.8(c) is redundant and has been deleted upon adoption.

127. COMMENT: N.J.A.C. 14:3-8.8(a)2 should also exempt schools, hospitals, governmental facilities, and low income housing. (ETG) (NJNG) (SJG)
RESPONSE: It is not clear that the developments cited by the commenters will always be consistent with the State Plan and smart growth goals. Therefore, it is appropriate for the Board to determine on a case-by-case basis whether each development of these types is eligible for exemption based on public benefit.

128. COMMENT: In interpreting the portion of the rule regarding exemptions from cost limits, we urge the Board to consider the larger consequences of certain developments that provide affordable housing without adhering to the smart growth principals. Developments created under a "builders remedy" lawsuit, when such developments are comprised of a majority of market rate housing and only a small proportion of affordable units, should not be considered as providing a significant

benefit to the general public and thus should not be eligible for an exemption. (NJCF)
RESPONSE: The Board believes that determinations of public benefit are of necessarily situation-specific and may change over time. Therefore, any advance decision in the rules on which developments will provide public benefit in the future would be premature. However, the Board is aware of the issues with which the commenter is concerned, and will take them into account when reviewing requests for exemptions on the basis of public benefit.

129. COMMENT: Regarding the proposed exemption for the agricultural industry, we support the Board's requirement that in order to receive an exemption from cost limits on areas not designated for growth that serve an agricultural building or structure, the agricultural operation must be producing a majority of its products on a New Jersey commercial farm. Limitations on the types of agricultural operations eligible for exemptions are important in order to avoid subsidizing highly industrialized forms of agriculture in areas not targeted for intensive growth. (NJCF)
RESPONSE: The Board appreciates this comment in support of the rules.

130. COMMENT: Proposed N.J.A.C. 14:3-8.8 provides exceptions to the restrictions on extensions to serve no growth areas, upon a showing that a project will provide a significant public good and/or compliance with the proposed rule would cause extraordinary hardship. Such exceptions will require written approval from Board Staff. This will likely result in administrative gridlock as there will be numerous appeals involving all of the State's public utilities. The planning and construction process and activities for individual projects is ongoing and dynamic. Moreover, the planning map is dynamic, and the designation of specific areas into or out of growth areas could change, thereby potentially resulting in a particular extension project not originally thought to run afoul of the restrictions in the rule subsequently triggering a problem. The end result is that worthwhile main extensions will not be made. More important, even if possible, allocating the kind of resources that would likely be required to make such a system workable is a misallocation of resources. It is more cost effective and efficient to recognize and modify the consequences of the rule upfront than to create a new administrative process. (SJG) (PSE&G)
RESPONSE: The Board agrees that it is important to minimize case-by-case Board determinations for the reasons cited by the commenter. In developing these rules, the Board has attempted to categorize and systematize as many extensions and extension scenarios as possible. However, for those inevitable situations where unusual circumstances arise, which could not be foreseen in advance, some flexibility must be provided to the Board in order to ensure that the rules enable the Board to fully carry out its statutory mandates.

131. COMMENT: The exemptions list under 8.8(h) should not require that all three criteria be met in order for the Board to issue an exemption. The extraordinary hardship provisions in 8.8(I) are extraordinarily difficult to meet. It is unclear, for example, under what circumstances any applicant could meet the requirement to prove that the applicant's hardship is unique and would not apply to any other

projects in the region. Just from an evidentiary perspective, it is difficult to foresee how one would go about proving the "negative" that no other projects would have similar hardships. Any one of the three criteria should be sufficient. For example, if the Board finds a project to provide a significant public benefit, that should be sufficient even if some alternative might be available (such as the payment of a huge amount of CIAC by a developer). (CPD)
RESPONSE: The Board does not believe that the three requirements of 8.8(h) are unduly burdensome. It is important that exemptions to the rules be narrow in order to prevent the undermining of smart growth goals. In addition, the standards of "no practical alternative" and "unique circumstances that do not apply to other projects in the region" are commonly used in Federal and State environmental statutes.

132. COMMENT: N.J.A.C. 14:3-8.8(h) and (I) would create uncertainties and/or delay that would degrade reliability and negatively impact the ability of a utility to provide safe, proper, and adequate electric service to customers in non-growth areas. The exemptions are very specific in their description and very limited, and do not comport with the manner in which the utilities design, build and operate distribution systems. The interpretation of these provisions prevents cost recovery of system reinforcement work or, at the very least, would call each individual repair and maintenance project into question and/or require a lengthy review of each project to determine if the listed exemptions would apply and, if so, require a regulatory review process for each such project. Without reasonable assurance of cost recovery for otherwise prudent maintenance and repair projects in non-growth areas, utilities will be unable to invest in new infrastructure in these areas and reliability in these areas would ultimately suffer. (PSE&G)
RESPONSE: Maintenance and repair of infrastructure are not subject to these rules. (see the response to comment 126)

133. COMMENT: A new N.J.A.C. 14:3-8.8(k) should be added that specifies that the Board shall act on any exemption request within 90 days and that failure to act within that time will be deemed to be an approval. (CPD)
RESPONSE: While the Board will make every effort to act promptly on all exemption requests, the Board does not believe that it would be appropriate to grant exemptions on this basis. A default issuance of an exemption, as suggested by the commenter, is only justified when there is an urgent need for quick action, and where the erroneous grant of an exemption would not have major consequences. Considering the amount of time and number of approvals required for a new development, it is unlikely that most exemption requests will require urgent action. Furthermore, the Board has insufficient experience with this new program to accurately assess the likely consequences of erroneously granted exemptions. If a situation arises in which a decision on an exemption request is urgently needed, the party requesting the exemption can request that the Board expedite the decision.

14:3-8.9 Designated growth area suggested formulae – general provisions

134. COMMENT: The limitation in N.J.A.C. 14:3-8.9(a)1 suggests that the only time when deposits and refund formulae apply is if the extension is in a growth area. That suggests that no such requirements exist for extensions in non-growth areas. That is, beginning with the effective date of this rule, the regulated entity can charge a CIAC (including tax effects) for the entire cost of the project and is not required to provide any offset for revenue from the new customer or customers. Pursuant to the transition rules in N.J.A.C. 14:3-8.6(c) and (d), if the utility voluntarily chooses to contribute to the cost of an extension it is to use the suggested deposit formulae with reduced levels of refunds, but that is only if the utility voluntarily chooses to make such a contribution to the cost. As we read these rules, there is no bar to charging 100% of the costs of an extension in a non-growth area immediately after the rules go into effect. (CPD)
RESPONSE: First, it should be noted that N.J.A.C. 14:3-8.9(a)1 sets forth the situations in which the *Board staff* will apply the suggested formula. The regulated entity and the applicant may mutually agree to apply the suggested formula to any extension serving an area designated for growth. However, the commenter is correct that, during the phasing out period provided for under N.J.A.C. 14:3-8.6, for an extension serving an area not designated for growth, the regulated entity may contribute nothing to the extension and may require the applicant to pay the entire cost, as of the operative date of the rules (note that the rules become operative 90 days after this adoption is published in the New Jersey Register). Should the regulated entity want to contribute to an extension serving an area not designated for growth during the phasing out period, the regulated entity may contribute no more than allowed by N.J.A.C. 14:3-8.6. After the phasing out period the regulated entity may not contribute at all to an extension serving an area not designated for growth.

135. COMMENT: 8.9(d)4 correctly imposes the additional costs of non-standard service on the applicant. The Board should be aware, however, that this provision does not work smoothly in conjunction with N.J.A.C. 14:3-8.4 (undergrounding). N.J.A.C. 14:3-8.4 vastly expands the requirement for undergrounding facilities and, as such, arguably makes undergrounding the "standard" approach. Thus, in many instances, undergrounding would not be subject to this 8.9(d)4. requirement and the utility (and other ratepayers) will be responsible for the additional costs of undergrounding facilities. (CPD)
RESPONSE: As noted in the summary of the proposal at 36 NJR 278, the Board had intended the proposed undergrounding provisions at N.J.A.C. 14:3-8.4 to continue the undergrounding requirements in the previously effective rules (see, the prior rules at N.J.A.C. 14:3-8.3, N.J.A.C. 14:5-4.4 and N.J.A.C. 14:10-4.4). However, the proposal erroneously expanded the undergrounding requirements beyond those in the previous rules. Therefore, the Board has proposed new underground provisions elsewhere in this issue of the New Jersey Register. The problem identified by the commenter has been addressed in those proposed new provisions.

136. COMMENT: N.J.A.C. 14:3-8.9(d)4 permits the applicant, in situations where requested service costs more than standard service, to perform the work or hire a contractor. There is no mechanism for a utility to approve the design and construction of a customer installed distribution system, yet the utility assumes ownership of the 3rd party system. This creates a potential safety hazard through non-standard material, construction specifications, and practices. A 3rd party designed and installed system may not be compatible with our system and not provide the same quality of service to residential and commercial customers. Any permission for an applicant to perform such work must be approved by the utility, and if preformed by a 3rd party inspected and constructed to the utility company standard. In addition, the utility must retain the ability for reasons of safety, reliability, and operational considerations or to fulfill its agreements with its represented workers to choose to perform the work itself. The proposal should be modified to include these requirements. (PSE&G)
RESPONSE: Please see the response to comment 140 below.

137. COMMENT: Language at N.J.A.C. 14:3-8.9(d)4, allowing an applicant to hire a contractor to work on extensions, should be deleted. (ETG) (NJNG) (SJG)
RESPONSE: Please see the response to comment 140 below.

138. COMMENT: The new rules should provide expressly that we retain the ability to select the means and materials by which extensions are built. (VNJ)
RESPONSE: Please see the response to comment 140 below.

139. COMMENT: Cost language at N.J.A.C. 14:3-8.9(d)4 should be changed from "the actual low bid cost for the extra work" to "the lowest responsible bidder's cost for the extra work". (ETG) (NJNG) (SJG)
RESPONSE: Please see the response to comment 140 below.

140. COMMENT: N.J.A.C. 14:3-8.9(d) allows customers to perform utility work unless a Board approved contract is in place. This provision is very onerous and confusing, blending BUD Tariff language, tax gross up issues and others. This needs to be clarified. (PSE&G)
RESPONSE: To comments 136 through 140 The provision allowing an applicant for service to contract independently for construction of infrastructure was taken from the prior rules at N.J.A.C. 14:5-4.8(c) and 14:10-4.8(c), and was unintentionally broadened in the proposal. Therefore the provision has not been adopted.

141. COMMENT: We concur that refunds should be based on actual revenue and that they should not be paid until at least one year following completion of construction. This section should be revised to cut off refunds after the fifth anniversary of completion of construction. If the project has not been built after that time, there is little further benefit for the developer, particularly relative to the continued burden on the utility to track revenue from that extension. (UW)

RESPONSE: The former extension rules provided for a ten year cutoff point, and the Board's experience has been that this works reasonably well and allows for projects of varying sizes.

142. COMMENT: The current suggested refund formula provides for a two and a half times revenue calculation to be refunded to a developer. The proposed rules for development in Planning Area 4 and 5 would provide for no refunds. This is done to provide a disincentive for development in these areas. We support this portion of the proposed rules. (NJA, ET, MHWC)
RESPONSE: The Board appreciates this comment in support of the rules.

143. COMMENT: N.J.A.C. 14:3-8.9(e) would require utilities to notify applicants of actual costs within 90 days of construction completion. Construction is not deemed complete until final paving has occurred, even though this may take place several months following completion of the remainder of the work. Additionally, since invoices may be received late and it requires time for a utility to turn around posting costs and apply overheads, the phrase "or as soon thereafter as reasonably practicable" should be added to the requirement to notify applicants of actual costs within 90 days following completion of construction. (UW)
RESPONSE: The commenter's suggested change has been made upon adoption, to reflect the reality that completion of construction may depend upon other parties that are not under the control of the regulated entity.

14:3-8.10 Designated growth area suggested formula – multi-unit or non-residential development.

144. COMMENT: N.J.A.C. 14:3-8.10(b) refers to the cost of the extension. If cost is defined to include tax consequences, the provision is appropriately written. If the definition of cost is not modified in N.J.A.C. 14:3-8.2, then a phrase needs to be inserted here to reflect that costs include tax costs. (CPD)
RESPONSE: The general provisions for use of the suggested formula at N.J.A.C. 14:3-8.9(d)1 apply to extensions covered by both N.J.A.C. 14:3-8.10 and 8.11, and specify that tax consequences are included in the cost of an extension.

145. COMMENT: N.J.A.C. 14:3-8.10(c) highlights a problem regarding the requirement in 8.7(b)2. for the minimum size extension to be built. N.J.A.C. 14:3-8.10(c) requires that each phase of a multi-phase development be treated as a separate development. In conjunction with N.J.A.C. 14:3-8.7(b)2., that almost mandates that the minimum size wire for Phase I be installed, then ripped out and replaced with larger wire to serve both Phase I and Phase II. Our recommended solution is to eliminate N.J.A.C. 14:8.7(b)2. If that is done, there is no need to change N.J.A.C. 14:3-8.10(c). (CPD)
RESPONSE: Please see the response to comment 146 below.

146. COMMENT: NJAC 14:3-8.10(c): It is common and prudent planning and development practice for developers of commercial real estate properties to move

forward with projects in phases. Under the proposed rule, as each new phase is moved from the drawing board to the construction phase the necessary utility infrastructure would have to be re-assessed on an incremental basis, leading to administrative delays and inefficient and unnecessarily costly utility extensions and service infrastructure. Accordingly, this provision may penalize phasing, which is recognized to be a sound planning practice, especially in Planning Areas 3, 4 and 5, and thereby increase the overall cost and risk of property investment. (NAIOP)
RESPONSE: This provision was intended to limit the installation of plant and facilities so that, should there be any doubt that a later phase of development would be completed, the plant would not be constructed. However, the commenters are correct that N.J.A.C. 14:3-8.10(c) as proposed could result in repeated installation and almost immediate replacement of plant and facilities. It is now apparent that this could jeopardize the regulated entity's ability to provide safe, adequate and proper service at reasonable rates, and would not provide sufficient smart growth benefit to justify such a risk. Therefore, the rule has been modified upon adoption at N.J.A.C. 14:3-8.10(c) to correct the problem identified by the commenters.

147. COMMENT: The business community will view the adoption of these rules as a considerable increase in risk and make their investments outside of New Jersey. (ACRCOC)
RESPONSE: It is not clear to what types of risks the commenter refers. However, the Board believes that achievement of the State's smart growth goals will provide significant benefits to businesses in New Jersey, and that these benefits will counteract any potential risk. Therefore, the Board believes that the net effect of these rules will not be to discourage investment in New Jersey.

148. COMMENT: N.J.A.C. 14:3-8.10(d) and (e) have a drafting error that makes it appear as if multiple multi-year refunds are provided to a developer with respect to one customer. That is, 8.10(d) initially gives a refund based on 10 years of estimated revenues. 8.10(e) then gives a refund in year 1 based on actual revenue from the customer in year 1 multiplied by 10, but correctly eliminates this requirement if that is less than the estimated refund under 8.10(d). But the language in 8.10(e) also requires that this be calculated each year, with the ambiguous outcome of providing a second refund with respect to the same customer in year 2 based on 10 times actual revenues in year 2. The language should be clarified that there is only one 8.10(e) refund calculated per customer added. (CPD)
RESPONSE: The Board has clarified the application of the suggested formula on adoption by adding more detail to the cited rule provisions. In addition, proposed Example A (see 36 N.J.R 287), which was intended to carry over the substance of the prior rules at N.J.A.C. 14:3-8.3, contained an error. To correct this and to provide more assistance in understanding the application of the suggested formula, the example has been replaced on adoption with two step-by-step examples that provide more detail and illustrate an additional refund situation.

149. COMMENT: N.J.A.C. 14:3-8.10 should include a new subpart that is consistent with the provision in N.J.A.C. 14:3-8.11(e) that any deposit remaining after 10 years remains with the regulated entity. (CPD)
RESPONSE: The inconsistency identified by the commenter has been corrected on adoption. The provision has been moved to N.J.A.C. 14:3-8.9(f), which applies to both 8.10 and 8.11.

150. COMMENT: We are currently paying all developers 2.5 times annual revenue, not 5.0 times revenue, and therefore believe the recommended refund should be 5.0 times not 10.0 times. This comment also applies to the multiplier under the SGIIP, which should be 10 times not 20 times. (ANJ) (UW)
RESPONSE: While some regulated entities currently pay 2.5 times annual revenue, most are currently paying five times annual revenue. There is no logical basis for these different rates. In addition, the goal of the rules is to facilitate infrastructure extensions in areas designated for growth, so it is important to increase the speed of refunds. Therefore, the Board believes that a multiplier of ten is the best choice for these rules.

151. COMMENT: Certain aspects of the record keeping requirements are burdensome and unnecessary for a water utility. Refunds for a water utility should be established at the beginning of the process based on the average usage in that location for that type of residence, and should be held constant throughout the term of the developer's contract. For example, if a developer is building 50 single unit residential homes, the utility would utilize the average residential usage for single family homes to calculate annual consumption for refund purposes. The utility should not have to incur the additional expense or record tracking the 50 individual homes for the next 10 years. The annual average usage would be updated annually and the refund would be based on the currently approved tariff. The developer would still have the ability to challenge our computation of the refund. (ANJ)
RESPONSE: The Board agrees that the rules should provide maximum flexibility to regulated entities to use available data to calculate refunds. Therefore, the rules have been modified upon adoption to remove most references to actual revenues, thus allowing the regulated entity, where appropriate, to choose actuals or estimates as practicality dictates. Specifically, in N.J.A.C. 14:3-8.10(f) and (g), have been modified to remove the requirement for use of actual revenues in calculating refunds. In addition, new N.J.A.C. 14:3-8.10(i) specifically authorizes regulated entities to use either method of determining revenues unless otherwise specified.

152. COMMENT: N.J.A.C. 14:3-8.10 is environmentally unfriendly. The proposed refund formula, which is based on 10 times the actual water consumption, recalculated annually for 10-years, does not encourage the conservation of this precious resource, water. As an example, it is not that uncommon for a developer to participate in the water usage of the new homeowner's lawn as part of the sales transaction. If the developer were to say, I will reimburse you for your water bill for the first year, the resident would have no incentive to conserve and the developer

would get a nice refund on his investment. If the water bill for the first year is $1,000, the developer will hand a check to the homeowner for $1,000 and then turn to the water utility and receive a check for $10,000, a nice return by anyone's standard. We need to address the proper and efficient use of this precious resource in the final rules; it simply does not make sense to establish a system that encourages inefficient use of water. (ANJ)

RESPONSE: While the Board agrees that water conservation is an important goal, the Board does not believe that the use of the suggested formula will discourage water conservation. There are many other forces acting on both developers and water customers that have greater and more direct impacts on water usage.

153. COMMENT: The refund rules should be modified to ensure that a CLEC is not required to refund an amount that exceeds the amount of the original deposit received from the applicant. (ATT)

RESPONSE: The rules as proposed and adopted include a provision at N.J.A.C. 14:3-8.9(f) providing that a regulated entity shall not refund more than the total original deposit.

154. COMMENT: N.J.A.C. 14:3-8.10 and 8.11 create very time consuming record keeping procedures for refunds, and will require additional resources and training to manage the agreements. This will drive the cost up for serving all customers. Further, for growth-designated areas, cash-flow will likely be negatively impacted since the customer would be provided a revenue credit of 10-years in place of the existing 4-years for commercial and industrial customers and a 6-year revenue credit for land-developers (or 6 years under 8.11 for single residential customers). As such, the utility would finance costs for extensions that would otherwise be considered "excess" or non cost-effective under current policies. While we support incentives to encourage and reduce the cost of development in designated growth areas, the mechanism should be easy to administer and straightforward in its application. The general recommended concept is to directly provide builders and developers an up-front incentive for development in targeted growth areas. A Utility Infrastructure Incentive (UII) would be paid to developers on a dollar per unit for residential dwellings, or dollar per design peak unit for commercial and industrial end-uses. These incentives would attract development to the targeted growth areas. (PSE&G)

RESPONSE: The Board believes that increasing the speed of refunds is more practical and direct than the commenter's suggested scheme. Under the rules as adopted, the transaction remains where it is today – between the applicant for service and the regulated entity. The only change is the speed of the refund. Under the commenter's program, the Board would have to develop a system of charges, credits and disbursements to developers. This would involve an additional party (the Board), and would require routing funds through several additional steps. Of course, if a regulated entity believes that it can achieve the intent and purposes of these rules through some alternative method, the regulated entity is free to submit a petition for waiver under the Board's existing rules. A cross reference to

the Board's rules providing for Board approval of a waiver has been added upon adoption at N.J.A.C. 14:3-8.1(j).

14:3-8.11 Designated growth area suggested formula – single residential

155. COMMENT: In N.J.A.C. 14:3-8.11, the refund procedure is complex and would be time consuming. It would require a utility to review the revenue for each subject customer each year and provide a higher refund if applicable. We advocate retaining a simple procedure based on the actual cost and a stipulated revenue per customer amount for each utility. The refund period should be reduced to five years as well. (UW)
RESPONSE: The Board believes the proposed procedure will more accurately address the costs associated with single residential development than a stipulated revenue per customer approach advocated by the commenter. However, the Board has provided more flexibility for regulated entities in whether they use actual or estimated revenues in calculating refunds. See N.J.A.C. 14:3-8.10(f).

14:3-8.12 Smart growth infrastructure incentive program (SGIIP)

156. COMMENT: We support the provisions in N.J.A.C. 14:3-8.12, Smart Growth Infrastructure Incentive Program. This will be an important program to help redevelopment of older urban areas. We understand that the relocation of utility plant is often a requirement and an obstacle under the current regulatory system. Reducing obstacles to redevelopment is a key goal of the State Plan and this proposal should help in that endeavor. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules.

157. COMMENT: N.J.A.C. 14:3-8.12 could result in substantial excess cost which revenues would be insufficient to cover. Revenue credits would be higher and there would be fewer customer contributions for new construction. If the customer's revenue does not materialize, the utility needs to recover the capital costs and a mechanism should be provided to allow the utility to recover the excess costs in rates. Also, the incentive mechanism should be easy to administer and straight-forward in its application to avoid the increase in cost to all customers caused by the need for additional resources and modified administrative processes. (PSE&G)
RESPONSE: If revenue does not meet costs, the deposit remains with the regulated entity. Thus if the revenue does not materialize, the regulated entity will be able to recover the capital costs by keeping the deposit, without having to address the issue in a rate case.

158. COMMENT: N.J.A.C. 14:3-8.12, which proposes a smart growth infrastructure incentive program, could require substantial capital investment by utilities in accordance with the 20 times annual revenue formula prescribed. It would be preferable to leave these arrangements for negotiation between developers and

utilities. However, if this section is implemented, utilities' accelerated investment in these projects should be eligible for rate recovery under the TRIP. (UW)
RESPONSE: The regulated entity would retain the flexibility desired by the commenter in accordance with N.J.A.C. 14:3-8-12.(a). That section applies the cost provisions of N.J.A.C. 14:3-8.7, which at N.J.A.C. 14:3-8.7(c) allow the regulated entity and the applicant to come to a mutual agreement, negotiated between the parties. The Board believes that redevelopment is an important goal and that the SGIIP program is needed to encourage redevelopment in appropriate areas. Investments made under the SGIIP would be eligible for rate recovery through a rate case, but not under the TRIP, because the SGIIP applies to extensions which have been requested by an applicant, while a TRIP applies only to cases where an applicant has not yet requested the extension of service.

159. COMMENT: In N.J.A.C. 14:3-8.12(a), the phrase "cost of necessary relocations" will create problems of interpretations and unintended consequences. With the exception of the substantive expansion of the undergrounding requirements, every other part of this proposed rule establishes provisions relating to extensions of service, i.e., construction that is necessary to serve the applicant. In contrast, relocations of service typically involve the necessary moving of lines that go through and beyond the customer's property to serve others. The vast majority of utilities in the State require the customer to pay for 100% of such relocation costs and, because there is no added revenue involved there are no deposit or refund mechanisms. As set forth in this subsection, an unwarranted interpretation could be reached that relocation costs would be rolled into the extension costs and charged in the form of a refundable deposit. We recommend deletion of the phrase "relocations and". (CPD)
RESPONSE: The commenter is correct that the intent of the rules is to allow a regulated entity to include the cost of certain relocations in the refundable deposit. The relocations that could be included would be any that are necessary in order to provide the service that the applicant has requested. The commenter describes a case in which an applicant requests services for a set of customers, and relocation of some other customers' existing infrastructure is necessary in order to serve the applicant's customers. In this case the regulated entity may choose to include the relocation cost as part of the applicant's refundable deposit or may choose to charge the applicant the full cost. This is part of the Board's goal of encouraging development in areas designated for growth.

160. COMMENT: The Board wants to encourage development in Planning Areas 1 and 2. The proposed rules suggest a twenty times refund formula. While this would appear to be an incentive to development it is a disincentive to utilities. Between rate cases, we would make the twenty times refund with no rate base recovery, therefore, the actual earnings would be much lower than under the current rules. We would suggest that the twenty times refund is too high and should be lower, and also that for us to have an incentive, any earnings shortfall should be put into a TRIP mechanism. (NJA, ET, MHWC)
RESPONSE: The twenty times refund formula is found in N.J.A.C. 14:3-8.12, which provides for a smart growth infrastructure investment program (SGIIP).

SGIIP is a voluntary program so a regulated entity need not participate if it believes the refund formula is too high. The standard refund formula ten times multiplier applies in designated growth areas under N.J.A.C. 14:3-8.10 and 8.11. However, that formula is also voluntary. Under N.J.A.C. 14:3-8.7(b), a regulated entity and an applicant can make an agreement to distribute the costs of an extension in a designated growth area in some other way. Should the applicant and the regulated entity be unable to agree on the distribution of costs, either party can petition the Board to apply the suggested formula.

161. COMMENT: We urge the Board to increase the financial incentives to developers proposing to build in redevelopment areas under a Smart Growth Infrastructure Incentive Program. Promoting growth, particularly in redevelopment areas, is a good way to implement the State's smart growth goals. Redevelopment opportunities are plentiful in growth areas and must be utilized to accommodate future growth and revitalize communities. (NJCF)
RESPONSE: While the Board agrees that every effort should be made to increase incentives for redevelopment in designated growth areas, the rule is also designed to prevent an undue burden on ratepayers and regulated entities. If at some future date changes are deemed necessary to improve the rules, the Board will consider them at such a time.

162. COMMENT: Proposed N.J.A.C. 14:3-8.12 establishes the Smart Growth Infrastructure Incentive Program (SGIIP). However, there does not appear to be a clear distinction between a SGIIP Area and a Designated Growth Area. Looking at the two definitions, it would seem that the SGIIP Area definition (Planning Area 1 area which appropriate formal sanction has been obtained from the Office of State Planning) is already subsumed in the Designated Growth Area definition. The rules need to be clarified regarding this distinction. (RPA)
RESPONSE: The definitions are not the same. The definition of designated growth area at N.J.A.C. 14:3-8.2 includes, among other things, areas that are *either* designated under the State Plan Map as Planning Area 1 *or* have been identified for growth through a plan endorsement. Thus, it would be possible for an area to meet only one of these criteria an still be classified as an area designated for growth. However, a SGIIP area must meet both criteria. It must be located in Planning Area 1, *and* must also have received plan endorsement from the State Planning Commission. See N.J.A.C. 14:3-8.12(a).

163. COMMENT: In N.J.A.C. 14:3-8.12(b) the proposed rule defines a SGIIP area as one that is located in Planning Area 1 "for which the municipality has obtained appropriate formal sanction from the Office of State Planning." First, is the intent of this subsection to refer to "plan endorsement" when it refers to the vaguely worded "formal sanction"? If so, we recommend that the language be changed from "formal sanction" to "plan endorsement". Second, this subsection refers to the Office of State Planning which does not currently exist by that name. That office is now called the "Office of Smart Growth." But more importantly, if this subsection is meant to refer to "plan endorsement" the language should further be changed to

show that it is the State Planning Commission that will formally approve applications for plan endorsement, not the Office of Smart Growth. (NJF)
RESPONSE: The commenter's suggested clarifications have been made upon adoption.

164. COMMENT: We note the statement in the new rules that the "intent of this SGIIP program is to provide an additional incentive to develop in the areas of the State that have gone through the initial plan endorsement process, and that the utility would receive the benefit of new customers in areas that would not have been feasible to build in formerly." The utilities will undoubtedly argue that they will incur higher costs under this SGIIP program and that they should not be expected to absorb these higher costs until the point that these costs can be recognized in rates through their next base rate case. They may therefore argue for similar rate treatment of SGIIP program costs as the new rules have proposed for TRIP investment. While it may be true that the utilities would incur the higher costs associated with this program, they will also be provided with the opportunity to acquire incremental revenues from new customers that would otherwise not have been feasible. These incremental revenues would serve to offset the revenue requirement associated with the higher utility costs of the SGIIP program. This is an issue that will need to be explored further as empirical data accumulates during future utility base rate cases. (RPA)
RESPONSE: The Board appreciates this support for the rules, and plans to monitor the data as suggested as the SGIIP program is implemented.

SUBCHAPTER 10 Targeted revitalization incentive program (TRIP)

165. COMMENT: A number of utilities have over the past year or two filed individual TRIP proposals, and we believe that the Board's proposal to adopt a set of generic guidelines through a rulemaking will help move the process forward. We support the adoption of a TRIP rule, commend the Board for its proposal, and believe that with modest modifications the rule can produce real redevelopment plans that will truly "eliminate infrastructure barriers to development in targeted areas and to offer incentives for regulated entities to serve such development." (CPD)
RESPONSE: The Board appreciates this comment in support of the rules.

166. COMMENT: The Board's stated intent in proposing the pilot TRIP is to "eliminate infrastructure barriers to development in targeted areas and to offer incentives for regulated entities to serve such development." We fully support this goal, applaud the Board's innovation in this area, and we support the adoption of a generic TRIP rule under which individual utilities can make their own filings. (PSE&G)
RESPONSE: The Board appreciates this comment in support of the rules.

167. COMMENT: We support the TRIP program that encourages infrastructure in Planning Areas 1 and 2. While we all want Planning Areas 1 and 2 to attract most development, there is no reason why we should not encourage this development to

be sensitive and sensible with regard to how it utilizes our precious water resources. Therefore, we ask that you consider offering an even greater rate of return for systems that employ water reuse or other significant water conservation approaches. (AWMI)
RESPONSE: The Board appreciates the commenter's support for the rules. In developing the TRIP provisions, the Board must strike an appropriate balance. While it is important to reduce infrastructure barriers to smart growth development, it is also crucial not to place an undue financial burden on ratepayers. The Board believes that rules adopted herein will provide smart growth benefits without causing unnecessarily high rate increases for customers. Regarding the appropriate return for TRIP infrastructure investments, please see the response to comment number 225.

168. COMMENT: We support the provisions in N.J.A.C. 14:3-10 which create the Targeted Revitalization Infrastructure Program (TRIP). (NJF)
RESPONSE: The Board appreciates this comment in support of the rules.

169. COMMENT: This proposal forces utilities to be influential in sound development practice by creating the Targeted Revitalization Incentive Program (TRIP). TRIP eliminates the need for extension applications in areas targeted for development or redevelopment, thereby inducing developers to focus on these areas rather than others not designated for growth. The proposed new rule prevents TRIP pilots from becoming sprawl by implementing a yearly review process that is essential to preserve the goals of the program. (CTCC)
RESPONSE: The Board appreciates this comment in support of the rules.

170. COMMENT: The proposed regulations discriminate against CLECs. The financial incentives in the Smart Growth Infrastructure Incentive Program (Section 14:3-8.12) and the Targeted Revitalization Infrastructure Program (Subchapter 10) have been developed based on a regulatory model, i.e., a rate regulation formula and recovery system. The regulations' regulatory model is inapplicable to and provides no incentives for CLECs. Thus, the regulations should be modified to more appropriately reflect incentives applicable to a competitive environment. The Board should solicit CLEC recommendations regarding incentives that are more appropriate for a competitive environment, and on par with the incentives for rate of return utilities. (ATT)
RESPONSE: The Board has made every effort to devise incentives that would be useful for regulated entities that do not operate on a rate base/rate of return model. During the stakeholder meetings on these rules, Board staff repeatedly solicited suggestions on this issue, and the Board continues to welcome any such suggestions. However, even without specific incentives, the Board believes that the rules will, in the long run, benefit CLECs as well as all New Jersey businesses. Studies show that smart growth is economically beneficial and will encourage investment in New Jersey businesses. The commenter's claim that the rules discriminate against CLECs in particular is not accurate, as the rules will apply to CLECs and incumbent local exchange providers (ILECs), as well as other regulated entities.

171. COMMENT: We hope the Targeted Revitalization Infrastructure Program, TRIP, will be a robust program, and we offer our assistance to the municipalities and utilities that need help coordinating efforts to take advantage of the TRIP. We also urge the Commissioners to ensure that approved TRIPs will not be too narrowly drawn so as to unnecessarily limit the scope of infrastructure upgrades that could be used to spur needed economic development in older urban and suburban areas. (NJF)
RESPONSE: The Board appreciates this comment in support of the rules.

172. COMMENT: The proposed rules provide for a Sunset provision. We believe that a Sunset provision is appropriate as the TRIP mechanism is envisioned as a pilot program. The pilot program should not automatically continue or revert to a permanent rate recovery mechanism. The Board, the Ratepayer Advocate and other interested parties should be given the opportunity to review the TRIP mechanism to determine if it is fulfilling the goals and objectives of the Governor's Smart Growth policies. We also support the proposed rule which requires that the TRIP mechanism must be reviewed and approved by the Board on an annual basis after careful review of all relevant underlying information, including the prudence of the investments. (RPA)
RESPONSE: The Board appreciates the commenter's support for the rules.

173. COMMENT: We are a proponent of the TRIP and support the goals that the Board seeks to achieve in removing barriers to development in targeted areas. However, the structure of the TRIP will not allow utilities to make the infrastructure investments needed, due to the lack of incentive for investment and eligibility restrictions. Typically, a redevelopment plan focuses on the economic center, and the surrounding areas should always be assessed for infrastructure work at the time, to maintain an economically sound approach and prevent repeated future service disruptions. Failure to consider the future redevelopment immediately outside the area covered by an approved master plan will lead to pockets of redevelopment such as occurred in the Atlantic City area. This type of piecemeal redevelopment is not conducive to Smart Growth goals, and disrupts residents and municipal operations. We recommend the inclusion of infrastructure work in areas contiguous to the targeted redevelopment area within a municipality. A new N.J.A.C. 14:3-10.1(d)2iii should be added, to read as follows: iii. The infrastructure has a service capacity that includes service to the TRIP area and the area surrounding the TRIP area, provided that (1) the area to be included is contiguous to the TRIP area; (2) the area to be included is within the same municipal boundaries; (3) the infrastructure improvement serves the principles of Smart Growth and avoids development of isolated pockets within small to medium sized municipalities; and (4) the expansion of TRIP area as included in this section has been approved by the Board. (ETG) (NJNG) (SJG) (NJNG)
RESPONSE: While the Board agrees that any development plan should include a holistic analysis of future infrastructure needs, the TRIP is a narrowly targeted pilot program. If the TRIP system proves workable, the Board will consider applying it in other contexts, including the one described by the commenter. Please note that the provisions describing the TRIP area, proposed at N.J.A.C.

14:3-10.2(b)2, have been converted into a formal definition of "TRIP area" and relocated on adoption in a new section, N.J.A.C. 14:3-10.2, and have been clarified.

174. COMMENT: Through the proposed TRIP rate mechanism, the utility will receive a guaranteed, dollar-for-dollar reconcilable return on, and return of, its TRIP-eligible investment with none of the usual regulatory lag that is experienced under the traditional base rate recovery mechanism. We are generally opposed to "automatic adjustment clause" rate mechanisms similar to what is being proposed for the TRIP rate mechanism. There are many reasons, but the most important reason is that such a mechanism represents inappropriate single-issue ratemaking. In addition, it is a well-known ratemaking principle that utilities are not guaranteed a return on investment in utility plant. Rather, the ratemaking process entitles the utility to no more than a reasonable opportunity to earn a fair rate of return. The automatic adjustment clause rate mechanism would enable the utility to earn a reconcilable, guaranteed rate of return on a portion of our rate base. Clearly, this removes the risk the utility may face in its efforts to satisfy its investors' desire for a return on their investment in TRIP-related plant. Another problem with automatic adjustment clauses is that they could allow utilities to earn in excess of their authorized rate of return. However, in order not to stand in the way of the State's Smart Growth program objectives, we would consider a reasonable, narrowly defined TRIP rate mechanism under certain conditions. (RPA)
RESPONSE: The Board appreciates the commenter's thoughtful analysis and support of the rules. The Board will work with the Ratepayer Advocate in analyzing the effectiveness and impacts of the TRIP pilot.

175. COMMENT: The proposed TRIP mechanism for utilities to upgrade their systems and invest in areas designated for growth should be strengthened. A more robust TRIP mechanism that would include return on equity, a higher cap, and additional types of projects, would be more effective in promoting investment in growth areas of the state. (UW)
RESPONSE: The Board has designed the TRIP to be a pilot program. At a future date, an analysis of the effectiveness of the TRIP will be made by the Board. At that time, any changes to the TRIP, such as those proposed by the commenter, may be considered. Regarding the appropriate return for TRIP infrastructure investments, please see the response to comment number 232. Regarding the cap, please see the response to comment 225.

176. COMMENT: We agree that the carrot approach to Smart Growth development will produce far better results than the stick approach. The Board has offered such a methodology in it's pilot TRIP proposal, and we agree with this concept. (SJG) (NJNG) (NJA, ETW, MHWA)
RESPONSE: The Board appreciates the commenters' support of the rules.

177. COMMENT: We believe that with certain modifications, the TRIP mechanism can successfully support both planned and anticipated development opportunities to targeted areas, encouraging both Smart Growth and economic development.

Moreover, the proposed Extension Rules encourage partnerships between utilities and those communities that stand to benefit from redevelopment. (NJNG)
RESPONSE: The Board appreciates the commenter's support for the rules.

178. COMMENT: We concur that there should be a cap on the TRIP rate as proposed by the rules. (RPA)
RESPONSE: The Board appreciates the commenter's support for the rules.

179. COMMENT: TRIP, as proposed, does not go far enough. TRIP should be modified to provide a current return on infrastructure renewal projects in Planning Areas 1 and 2, whether or not such projects are directly linked to a specific development, so that the older infrastructure in the State's established communities, and the service level, is steadily improved. (NJA, ET, MHWC)
RESPONSE: The Board has designed the TRIP to be a pilot program. Since the TRIP mechanism entails a certain amount of financial risk, which will be borne by the ratepayers, it is important to be conservative until experience with the TRIP can be gained. At a future date, an analysis of the effectiveness of the TRIP will be made by the Board. At that time, any changes to the TRIP, such as those proposed by the commenter may be considered.

180. COMMENT: TRIP would provide a current return on improvements to infrastructure directly related to new development in Planning Areas 1 and 2. Investments not directly related to development would continue to receive rate recovery through the existing rate case process. While this approach recognizes that infrastructure beyond specific developments is important to spur development and to provide quality service in Planning Areas 1 and 2 communities, the Board's proposal assumes that the existing rate case process provides an adequate incentive for utilities to improve Planning Areas 1 and 2 infrastructure not directly related to development in a cost-effective manner. First, the rate case process encourages utilities to delay non-revenue producing improvements until the next rate case, which may be years away. Expecting a utility to make such investments and wait several years for a future rate case to generate a return is like asking an investor to buy a bond and then skip the first several years of interest payments. Second, utilities which group their infrastructure improvements around rate increases see higher unit costs for such work, which drives up rates. By scheduling such work over several years, utilities can partner through multi-year contracts with vendors who will, in turn, bid lower unit costs because they can schedule crews, equipment, and supplier deliveries over time. This partnership will enable us and our contractor to develop efficiencies and improve work processes throughout the course of the contract. To address these issues, several states have adopted the Distribution System Improvement Charge including Pennsylvania, Indiana, Illinois, Delaware and Ohio. These states have a surcharge up to 5% of revenues and Delaware is 7.5%. The 1% as proposed will not produce enough incentive. (NJA, ET, MHWC)
RESPONSE: The Board plans to adopt an additional phase of smart growth rules to address costs for "common plant" or infrastructure that cannot be directly attributed to serving a particular customer or set of customers. In the meantime,

the Board has adopted TRIP as a pilot program. The Board expects to gain valuable experience and insight from the TRIP, which will then inform the Board's future rulemaking on these issues. However, at present it is important to begin conservatively, in order to minimize any possible impacts on ratepayers.

181. COMMENT: We commend the Board for the creativity of the concept underlying the TRIP program. Unfortunately, the rules for implementation are unworkable. The Board wants to review and sign-off on the construction projects, costs, and detailed work plans of the utility. Neither the Board nor its Staff has the internal expertise necessary to fulfill this role. It is likely that the first few TRIP filings will take months to be reviewed by Staff and be the subject of several hundred data responses as Staff tries to educate itself on distribution line construction projects. Staff of course will need to develop similarly detailed expertise for other types of utilities subject to these rules. (CPD)
RESPONSE: While the Board does not foresee the problems envisioned by the commenter, the TRIP is a pilot program. If problems arise, the Board will modify the TRIP as needed to address them. Furthermore, after the Board gains experience through implementing the TRIP, the Board will evaluate the effectiveness of the TRIP. At that time, any changes to the TRIP, such as those proposed by the commenter, may be considered. In addition, petitioners can speed the process by ensuring that their petitions are complete and well supported and that their responses to discovery requests are responsive.

182. COMMENT: There is a yearly reconsideration of the value of each TRIP project. That would further add to Staff's burden and further add to the delays involved in getting any approvals. A developer simply cannot proceed with a multi-year development based on the knowledge that this year it may not be required to submit a deposit due to TRIP status, but next year the rules may change. Ideally, a TRIP designation would operate for the duration of the project. While not ideal, at the very least, the regulatory process has to have clear deadlines for decisions to be made so that a developer and the utility is not left hanging for months after a year 2 filing is made to find out whether a deposit will be necessary. (CPD)
RESPONSE: New N.J.A.C. 14:3-10.6(d) has been added upon adoption to clarify that, in the event a TRIP is terminated, the regulated entity may complete any extensions requested by an applicant prior to the termination of the TRIP, which would have been covered under the TRIP, without requiring the applicant to furnish a deposit.

183. COMMENT: We support the TRIP program, provided that priority is given to Planning Area 1 and designated centers, and that any projects in Planning Area 2 are carefully evaluated to ensure that the proposed development is not resulting in sprawl. This underscores the importance of accurately and appropriately mapping the Planning Areas in the upcoming Cross Acceptance process. (NJCF)
RESPONSE: The Board appreciates the commenter's support for the rules, and agrees that careful application of the TRIP is essential in meeting smart growth goals.

184. COMMENT: As N.J.S.A. 48:2-23 mandates "that regulated entity service be ... furnished in a manner that tends to conserve and preserve the quality of the environment," we urge the Board to consider giving additional incentives to developers that agree to utilize alternative energy, such as solar energy, within their proposed development. We're aware that the Board is providing alternative energy incentive grants to both commercial and residential parties through its Clean Energy Program, and we applaud that. Developers could receive these grants in addition to other incentives to build within growth areas. We urge the Board to further educate the development community about the Clean Energy Program. (NJCF)
RESPONSE: The Board is making every effort to educate its regulated community about the Clean Energy Program (CEP). In addition, the Board's policy, when there is an oversubscription for CEP funds, is to give preference to projects in areas designated for growth. However, since the TRIP is a pilot program, the focus of the program is necessarily narrow. At a future date, an analysis of the effectiveness of the TRIP will be made by the Board. At that time, the changes proposed by the commenter may be considered.

185. COMMENT: The proposed rules do not reflect an adequate consideration or transitional process for what happens if a TRIP project loses that status. Does the developer then become subject to a deposit requirement? Do the costs already incurred under the TRIP surcharge, but not yet recovered get removed and deferred for inclusion in base rates later? (CPD)
RESPONSE: New N.J.A.C. 14:3-10.6(d) has been added upon adoption to address the question raised by the commenter. If a TRIP terminates, investments made in projects already approved will continue to be eligible for coverage by the TRIP charge. However, additional investments will not. Further, the regulated entity may complete any extensions requested by an applicant prior to the termination of the TRIP, which would have been covered under the TRIP, without requiring the applicant to furnish a deposit.

186. COMMENT: The long term objectives of the TRIP program would be best served by starting with two specific target areas in each utility's service territory for TRIP pilot programs. This approach would meet the Board's objectives in that it would provide the specific data sought by the Board as reflected in the rule proposal. The criteria to determine the most appropriate areas can be developed, but the program must be allowed to continue through a full five year infrastructure plan. (SJG)
RESPONSE: This approach would bypass one of the key elements of the TRIP -- that is, the requirement that regulated entities apply for a TRIP in conjunction with a municipality. The achievement of smart growth requires full participation cooperation by, and cooperation among, developers, municipalities, and regulated entities, as well as all New Jersey citizens. In addition, although the TRIP must provide for termination by the Board in the event that the Board determines that it is not achieving the desired results, new N.J.A.C. 14:3-10.6(d) has been added upon adoption to clarify that investments made in projects already approved under the TRIP will continue to be eligible for coverage by the TRIP charge.

14:3-10.1 Purpose and scope, general provisions

187. COMMENT: N.J.A.C. 14:1-10.1 should be deleted as wasteful so that there is no requirement to install minimum sized lines that would then be ripped out and replaced if additional growth occurred. It is noteworthy that because the Board will be reviewing any TRIP petition, it will have the opportunity to rule regarding the planned extension project and, thus, there is no need to tie the hands of the Board with respect to what size line should be constructed. If the Board wants to impose a minimum size requirement on a case-by-case basis it can do so, but it should also have the discretion to approve a TRIP with a larger sized line that may be needed to meet future growth in the same area. (CPD)
RESPONSE: It is not clear to what provisions the commenter refers. N.J.A.C. 14:3-10.1 does not impose a minimum size of infrastructure. While provisions adopted at N.J.A.C. 14:3-10.3(a) (proposed at N.J.A.C. 14:3-10.1(d)) do require that a TRIP eligible investment serve only the TRIP area, this provision also allows for construction of infrastructure that serves both a TRIP and a non-TRIP area, and provides that the cost must then be prorated to account for the costs of the TRIP-eligible and non TRIP-eligible investments. Therefore, it would not require a minimum size utility line.

188. COMMENT: Because the removal of obstacles to redevelopment is a critical goal of the State and because the TRIP as proposed is a pilot program requiring Board approval on a case by case basis, we suggest that the TRIP provisions be somewhat liberalized. It is our opinion that 14:3-10.1(d) is too narrowly drawn as proposed. Because upgrades may be necessary outside of TRIP areas, but inside of designated growth areas, in order for improved service and upgrades in a TRIP area to occur, these costs should be part of the TRIP charge and not excluded as they are in the proposed rules. (NJF)
RESPONSE: Despite the fact that TRIP is a pilot program, it does entail some financial risk, which will be borne by ratepayers. Therefore, it is important to be conservative. In addition, N.J.A.C. 14:3-10.3(a)3 (proposed at N.J.A.C. 14:3-10.1(d)) allows for prorating of TRIP charges to address this concern. Finally, areas just outside of TRIP areas will often be in a Planning area 1 or 2 and thus requests for extensions in these areas will often be eligible for coverage under N.J.A.C. 14:3-8.

189. COMMENT: N.J.A.C. 14:3-10.1(d)7 should be added to clarify that “Nothing herein should be deemed to imply that costs ineligible for recovery through a TRIP would not be recoverable in base rates to the extent found to be used and useful in the provision of service to customers and not imprudently incurred.” (CPD)
RESPONSE: The Board does not believe the suggested provision is necessary because it is unlikely that readers will make the inference with which the commenter is concerned, since the rules clearly do not address rate recovery issues.

190. COMMENT: 14:3-10.1(e) is generally unworkable and particularly so unless the Board establishes clear requirements that it will act on each yearly filing within a short period of time and that in the absence of action the filing is deemed to be approved. (CPD)
RESPONSE: While the Board will make every effort to act promptly on all TRIP filings, the TRIP is a pilot program and more experience Is needed before the Board considers a default approval system. In addition, petitioners can speed the process by ensuring that their petitions are complete and well supported and that their responses to discovery requests are responsive.

191. COMMENT: We support N.J.A.C. 14:3-10.1(e) which states that the Board requires frequent and detailed monitoring and reporting of TRIP -eligible construction and associated construction expenditures during all phases of the TRIP, in order to ensure prudent investment and compliance with the TRIP rules. After all, the utilities receive significant benefits from the proposed TRIP mechanism. In exchange, the utilities should be required to pass a rigorous "test" to justify TRIP recoverability for its investments. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

192. COMMENT: In N.J.A.C. 14:3-10.1(e), the level of monitoring and reporting that would be required will add administrative costs that the utility should be permitted to recover in a reasonable and timely manner. (PSE&G)
RESPONSE: This monitoring is necessary to ensure that the TRIP pilot is achieving the desired results. Because the TRIP is a pilot program that entails a degree of uncertainty, it is important that the Board have adequate and accurate information regarding expenditures and construction under the TRIP. In developing the TRIP provisions, the Board must strike an appropriate balance. While it is important to reduce infrastructure barriers to smart growth development, it is also crucial not to place an undue financial risk on ratepayers. The Board believes that the exclusion of these administrative expenses from eligible TRIP costs is an appropriate part of this necessary balance.

193. COMMENT: 14:3-10.1(f) and 14:3-10.2(b) appear to contemplate that the only areas that would ever be designated for TRIP treatment are areas within municipalities. Perhaps that is the intent or perhaps Planning Area 1 under the State's Planning Commission plans only include municipalities, but in any event, we do not see any reason for the Board to tie its own hands in this regard. The Board should retain discretion to permit TRIP treatment when it finds it to be in the public interest. (CPD)
RESPONSE: There is no unincorporated land in New Jersey; all land is located within a municipality. An area designated as Planning Area 1 can be an entire municipality or a part thereof.

14:3-10.3 Investments eligible for coverage under a TRIP

194. COMMENT: The Board should allow for timely recovery of TRIP promotional expenses. TRIP promotional expenses would be related to utility activities, in

partnership with the municipality, to promote the program and market to prospective developers in smart growth municipalities. We see this as a public benefit, not unlike other social and educational programs whose costs are currently recovered via the SBC. We would not be seeking any profit margin, merely dollar-for-dollar recovery of promotional expenses like other social programs. We believe that the Board would have the full opportunity to review proposed promotional activities and expenses, prior to implementation and ultimate recovery, as part of the review of the overall TRIP plan. (CPD) (NAIOP) (PSE&G) (JCP&L)
RESPONSE: In developing the TRIP provisions, the Board must strike an appropriate balance. While it is important to reduce infrastructure barriers to smart growth development, it is also crucial not to place an undue financial risk on ratepayers. The Board believes that the exclusion of promotional expenses from eligible TRIP costs is an appropriate part of this necessary balance.

195. COMMENT: The type of investments to be included in the TRIP mechanism should be limited to infrastructure investment that is physically located within the pre-determined TRIP area in order to avoid potential misuse of the TRIP mechanism by the utilities. We support this rule so as not to give the utility the ability to recover costs of investments outside of a TRIP area which are more appropriate for a base rate case. We take no exception to the TRIP eligibility rules as long as the Board commits to ensure no misuse of the TRIP mechanism. (RPA)
RESPONSE: Proposed provisions specifying eligible TRIP investments (see proposed N.J.A.C. 14:3-10.1(d), 10.2(c) and (d), and 10.5(c) and (d)2) have been consolidated upon adoption at N.J.A.C. 14:3-10.3. However, as proposed and adopted, the provisions do not restrict TRIP eligible expenses to those located in the TRIP area, but to those serving a TRIP area. In addition, plant and facilities that serve the TRIP area and also non-TRIP development may be constructed under N.J.A.C. 14:3-10.3(c)4 (proposed at N.J.A.C. 14:3-10.1(d)2). New N.J.A.C. 14:3-10.3(d) and (e) are added upon adoption to clarify how the Board will administer the prorating that is required when an extension will include both TRIP-eligible and non-TRIP eligible expenses. N.J.A.C. 14:3-10.3(f) is added upon adoption to clarify the term "fully depreciated", which is used several times in the proposal but is not defined. N.J.A.C. 14:3-10.3(g) is added upon adoption to clarify that non-TRIP eligible expenses will be subject to the extension provisions at N.J.A.C. 14:3-8. The Board believes that these provisions, taken together, will appropriately limit TRIP eligible expenses, consistent with the commenter's concerns.

196. COMMENT: We support the position set forth in the proposed rules that any TRIP investment not include the replacement of infrastructure that is fully depreciated even if such investment is within the TRIP area. (RPA)
RESPONSE: The Board appreciates the commenter's support for the rules. Upon adoption, the Board has added N.J.A.C. 14:3-10.3(f) to clarify the term "fully depreciated", which was used several times in the proposal but was not defined.

197. COMMENT: It is likely that most construction projects intended to upgrade the utility infrastructure in a targeted TRIP municipality will be an integrated

combination of replacement and rehabilitation of aged infrastructure as well as expanding capacity. These different elements may be difficult to identify and separate, as the proposal would require. The proposed categorization in N.J.A.C. 14:3-10.2 of TRIP-eligible and non-eligible infrastructure does not generally comport with the nature of construction plans that would be implemented in a designated growth area. We understand the Board's intent to not include routine replacement projects in the TRIP, but we recommend that the Board provide more flexibility with regard to the types of infrastructure included in TRIP filings. The Board could retain the ability to review the proposed plan and specific construction programs and determine whether or not it was consistent with the goals of the rules in general and the TRIP in particular. It is conceivable that part of a redevelopment plan may be to upgrade the existing infrastructure to improve overall deliverability and reliability in an older, urbanized area. Specifically, the cost of replacing cast iron main in these older areas would be excluded, even though such an improvement would be consistent with the stated purpose of the proposed rules. (SJG) (PSE&G) (CPD) (VNJ)

RESPONSE: The provisions setting forth investments that are eligible for coverage under a TRIP have been consolidated upon adoption at N.J.A.C. 14:3-10.3. The commenter's assumption that the cost of replacing cast iron mains would be excluded from TRIP may be incorrect. As proposed and adopted, the rules would not cover the replacement of infrastructure that is fully depreciated AND near the end of its useful life. However, if cast iron main did not meet both of those conditions, its replacement would not be excluded from coverage under the TRIP.

198. COMMENT: We are in complete agreement that the TRIP rate should not include TRIP-related promotional expenses or any other Operations and Maintenance expenses. We believe that such expenses should be the responsibility of the utility's shareholders in exchange for the utility receiving additional rate recovery in the form of TRIP rate base additions through a risk-free, guaranteed, reconcilable, dollar-for-dollar rate recovery mechanism. (RPA)

RESPONSE: The Board appreciates this comment in support of the rules.

199. COMMENT: The benefit of the TRIP would be negatively impacted by the exclusion of infrastructure upgrades. This issue again brings up the reliability and cost problems. The idea of keeping new capacity separate and apart from infrastructure improvements is impractical and could negatively impact reliability. It may be the case that the best way to properly serve new customers in the growth areas could simply be system improvement. Alternatively, some combination of new capacity with system improvement could also produce the most reliable and cost effective system to serve that growth area. For these reasons, infrastructure improvements should not be excluded from the TRIP. (SJG) (NJNG) (NJA, ETW, MHWA) (JCP&L) (NAIOP) (UW)

RESPONSE: Upon adoption, provisions detailing eligible TRIP investments have been consolidated at N.J.A.C. 14:3-10.3. These provisions, as proposed and adopted, allow for infrastructure upgrades to be covered by the TRIP under specific circumstances. The upgrades must serve to increase the number of customers

served, presumably through service to an increased density of land use. The rules do not require that the infrastructure be segregated for new and existing customers.

200. COMMENT: The proposed rules exclude the replacement cost of infrastructure that is fully depreciated or near the end of its useful life and the cost of removal of existing depreciated infrastructure. These are legitimate costs incurred as a direct result of the improvements made to promote redevelopment and must be eligible for TRIP treatment. Infrastructure serving the TRIP areas is likely to be older and may be fully depreciated. Nevertheless, the existing infrastructure is adequate for existing loads and would continue to be used and useful, except for the need to remove it to upgrade facilities for the increased capacity needed to support redevelopment. Fully depreciated assets are not necessarily at the end of their useful life and in need of replacement.
RESPONSE: Please see the response to comment 199 above.

201. COMMENT: Utility accounting practices do not typically allow the entity to determine whether a specific asset is fully depreciated since similar assets are grouped together for depreciation purposes. (NJNG)
RESPONSE: The Board is aware that accounting practices have an impact on determining whether an asset is fully depreciated. Therefore, in the newly consolidated N.J.A.C. 14:3-10.3, which details the requirements for an investment to be eligible for coverage under a TRIP, a new subsection (f) has been added to clarify the term "fully depreciated", which was used several times in the proposal but was not defined. The new section clarifies the Board's practice in determining the depreciation status of an asset, and provides a practical method for a regulated entity to determine whether an asset is fully depreciated.

202. COMMENT: N.J.A.C. 14:3-10.2 sets forth the various requirements of Board approval for a TRIP, which are consistent with our position in terms of the minimum requirements for a TRIP mechanism. It is important that the TRIP mechanism not be used by utilities to recover investments that the utilities would have had to make anyway, such as replacement and/or rehabilitation-related construction. The TRIP mechanism should also not be used to recover such operating expenses as promotional, legal, consultants and regulatory expenses. The utilities' base rates already include a certain level of annual allowances for such operating expenses and it would be difficult, if not impossible, to accurately determine to what extent the TRIP related promotional and regulatory expenses are truly incremental to the similar expenses that are already built into the utilities' base rates. Moreover, we believe that such TRIP related operating expenses should be the responsibility of the stockholders in exchange for the utilities receiving the benefits of a fully-reconcilable cost recovery mechanism that allows the utilities to recover their costs outside of a base rate case proceeding much sooner than under the traditional base rate recovery process. It should be recognized that there are no clearly identifiable benefits to the ratepayers flowing from the proposed TRIP mechanism, and the entire cost burden associated with the TRIP falls on the ratepayers. In other words, the ratepayers are expected to fund, on an accelerated and

guaranteed basis, all of the TRIP-eligible costs through the use of a fully reconcilable "automatic adjustment clause" rate recovery mechanism. In addition, the Customer Advances (eventually reclassified to Contributions in Aid of Construction) that are normally contributed by developers will be waived under the proposed TRIP mechanism. This also means additional costs to be funded by the ratepayers because it will result in a higher rate base and higher depreciation expenses. The ratepayers should not be further burdened through the inclusion of various operating expenses in the TRIP. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules. The Board has carefully crafted these rules to meet the objectives expressed by the commenter.

203. COMMENT: There should be a balancing of interests between ratepayers and shareholders and one way to accomplish this is to have the stockholders absorb any truly incremental operating expenses associated with the TRIP mechanism. This would be particularly appropriate in light of the facts that (a) the TRIP investments concern infrastructure for new customers and expanded capacity, (b) these TRIP investments can be expected to generate incremental margins; and (c) the proposed rules do not require that such incremental margins be used as an offset to the TRIP revenue requirement. Therefore, the utilities' stockholders will have the opportunity to retain any such incremental margins. Such incremental margins could be used to offset any claimed TRIP related incremental operating expenses. The intention of the rules is to limit the TRIP-eligible recoverable costs to the return on (financing costs) and the return of (depreciation) TRIP investment and that there should be no other costs in the TRIP. However, this intention is not entirely clear from the rules specified in N.J.A.C. 14:3-10.2(d). These rules prohibit the inclusion of promotional expenses and "costs incurred in order to comply with requirements, for example, legal fees, or costs for preparation of petitions and filings…" The rules in N.J.A.C. 14:3-10.2 (d) should first have an all-encompassing statement that no operating costs whatsoever (whether promotional or regulatory or maintenance related, security related, etc.) should be included in the TRIP and then be more specific by giving the examples of promotional and regulatory expenses in N.J.A.C. 14:3-10.2(d)(4) and (5). (RPA)
RESPONSE: The Board believes that the rules as adopted already address the concerns that the commenter raises. The commenter's suggested language is only slightly more detailed than that proposed and adopted. In addition, providing examples, while sometimes useful, can also be interpreted to narrow a provision, by implying that the provision is intended to include only items that are very similar to the examples given.

14:3-10.4 Initial Board approval of a TRIP

204. COMMENT: The utility and the municipality need to be in unison regarding the TRIP plan, but the municipality does not need to be a party to the petition. The municipality needs to evidence support, but this could be done in the form of a resolution specifically approving the partnership between us and the municipality

regarding the infrastructure needs of the community. The municipality does not need to incur the additional expense associated with the petition before the Board. (ANJ) (NJA, ET, MHWC) (UW)
RESPONSE: The requirement for a joint petition is intended to carry out one of the key goals of smart growth, and a goal of these rules, which is to ensure collaboration between municipal officials and regulated entities in local planning decisions. Note that, upon adoption, the requirement for a joint filing has been recodified at proposed N.J.A.C. 14:3-10.1(f). In addition, a reference to the joint filing requirement has been added upon adoption to the provisions regarding the annual TRIP adjustment petition at N.J.A.C. 14:3-10.5(a).

205. COMMENT: The proposed rule at 14:3-10.2(b)1 describes the information that needs to be submitted to the Board for approval of a TRIP pilot. It includes the language "municipality has obtained formal sanction from the Office of State Planning." First, is the intent of this subsection to refer to "plan endorsement" when it refers to the vaguely worded "formal sanction"? If so, we recommend that the language be changed from "formal sanction" to "plan endorsement". Second, this subsection refers to the Office of State Planning which does not currently exist by that name. That office is now called the "Office of Smart Growth." But more importantly, if this subsection is meant to refer to "plan endorsement" the language should further be changed to show that it is the State Planning Commission that will formally approve applications for plan endorsement, not the Office of Smart Growth. (NJF)
RESPONSE: The commenter's suggested changes have been made upon adoption.

206. COMMENT: N.J.A.C. 14:3-10.2(c)1 should be modified to read "…necessary to serve new development, redevelopment and/or new customers in the TRIP area;" (ETG) (NJNG) (SJG)
RESPONSE: This change is not necessary. The specific inclusion of "new customers" will cover the case where redevelopment occurs and customer numbers are increased. If customer numbers are not increased, the investment should not be eligible for the TRIP.

207. COMMENT: N.J.A.C. 14:3-10.2(c)1 should be modified to read "…The infrastructure will expand capacity and service to increase the potential number of customers served or allow for greater usage by existing customers, or to increase the density of land use, as measured by the number of residential units, and/or the number of square feet of industrial or commercial space; or the infrastructure will enhance service to the TRIP area through increased reliability." (ETG) (NJNG) (SJG)
RESPONSE: Because TRIP is a pilot program, it is important to begin conservatively. The commenters' suggestion will be considered as a possible future option, when the Board has gained experience with TRIP.

208. COMMENT: N.J.A.C. 14:3-10.2(d)1, 3 and 6 should be deleted. (ETG) (NJNG) (SJG)

RESPONSE: It is important that regulated entities not use TRIP to recover investments that the regulated entities would have had to make anyway, in order to fulfill their obligation to provide safe, adequate, and proper service. The regulated entities' base rates already include funding for such expenses.

14:3-10.5 Annual TRIP adjustment petition

209. COMMENT: As proposed, N.J.A.C. 14:3-10.3(a) through (d) are comprehensive, complete, and consistent with what we consider the minimum requirements for annual TRIP adjustment petitions. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

210. COMMENT: Under N.J.A.C. 14:3-10.3 the utilities are required to gather and assimilate detailed information with regard to zoning laws, redevelopment plans, etc, and will have additional administrative expenses to meet record keeping requirements. While the Board should always reserve its ability to conduct a review to assure that investments are reasonable and consistent with the redevelopment plans of the municipality and the smart growth policies of the State, the level of annual revisitation of the plan contemplated in the proposal will create a substantial administrative burden and implies an ongoing degree of second-guessing once the initial infrastructure plan is approved. These administrative burdens and uncertainties will serve to undermine the stated intent of the TRIP to encourage parties to "remove barriers to development and redevelopment in target areas…by ensuring that infrastructure for development…is in place, on time, at no cost."…At the very least, the utilities should be afforded a reasonable opportunity to recover these added administrative expenses on a timely basis, much as the administrative costs associated with running other societal programs are typically permitted timely recovery. (PSE&G)
RESPONSE: This monitoring is necessary to ensure that the TRIP pilot is achieving the desired results. Because the TRIP is a pilot program that entails a degree of uncertainty, it is important that the Board have adequate and accurate information regarding expenditures and construction under the TRIP. In developing the TRIP provisions, the Board must strike an appropriate balance. While it is important to reduce infrastructure barriers to smart growth development, it is also crucial not to place an undue financial risk on ratepayers. The Board believes that the exclusion of these administrative expenses from eligible TRIP costs is an appropriate part of this necessary balance.

211. COMMENT: N.J.A.C. 14:3-10.3(b) and 10.4 introduce uncertainty with respect to the long-term commitment of the Board to an infrastructure plan, and the commitment to recovery of investments already made under an approved construction plan. The Board must, of course, reserve the ability to modify a plan if it clearly looks like it is not working or is no longer necessary, but the rules should provide greater certainty that an infrastructure plan will be seen through and that the utility will be able to continue recovery of dollars expended to date. This creates a level of uncertainty which may thwart efforts to attract development and undermine the incentives for utility investment that the Board is attempting to create. At the least, the Board should clarify that, if it determines that the

infrastructure plan is no longer consistent with local plans and ordinances and the State Plan, this will not jeopardize the timely recovery of completed investments undertaken under previously-reviewed and approved plans. (PSE&G)
RESPONSE: The suggested clarification has been added upon adoption at N.J.A.C. 14:3-10.6(d). Also, it should be noted that the TRIP adjustment provisions proposed at N.J.A.C. 14:3-10.3 and the termination provisions proposed at N.J.A.C. 14:3-10.4 have been recodified upon adoption at N.J.A.C. 14:3-10.5 and 10.6, respectively.

212. COMMENT: N.J.A.C. 14:3-10.3(c): We envision that the infrastructure plan will not only be developed, but will be implemented, in cooperation with the affected municipalities in order to promote redevelopment. The Board should clarify that the affected municipality will have input into these determinations concerning prudence of development and whether the planned and prospective development continues to be consistent with the State Plan and all applicable local plans and laws. (PSE&G)
RESPONSE: The Board agrees that the municipality should be involved at all stages of utility service planning. As a joint petitioner and party to the TRIP proceedings, the recommendations of the municipality will be an essential part of the submittals considered by the Board in its decisions regarding the TRIP proposal.

14:3-10.6 Termination of a TRIP

213. COMMENT: The termination provisions of the proposed rules create a level of uncertainty that may discourage maximum use of the TRIP program. The following should be added to the end of N.J.A.C. 14:3-10.4(b): The Board will not approve future TRIP related expenditures for recovery, but will allow the regulated entity to continue to recover prior TRIP expenditures made in the affected area. The same sentence should be added to the end of N.J.A.C. 14:3-10.4(c). (ETG) (NJNG) (SJG) (UW) (JCP&L) (PSE&G)
RESPONSE: Proposed N.J.A.C. 14:3-10.4 has been recodified upon adoption at N.J.A.C. 14:3-10.6, and a new subsection (d) has been added to clarify that, in the event of a termination, a regulated entity can continue to collect a TRIP charge to cover investments already made under the TRIP.

214. COMMENT: We suggest that the wording in N.J.A.C. 14:3-10.4(c) is incomplete, and to fully reflect the apparent intent of the Board in that subsection, the sentence should read as follows: "(c) If the Board finds at any time that a regulated entity is not in compliance with the TRIP as approved, or if development patterns, economic trends, or other trends relevant to the prudence of the planned and prospective development being served by infrastructure constructed under the TRIP arise or are otherwise brought to the attention of the Board, the Board may cancel the TRIP approval upon three months notice to the regulated entity. We recommend that relevant trends should be examined as part of the Board's routine, regular review of the utility's TRIP program implementation and costs. (RPA)
RESPONSE: The Board agrees that it should examine relevant trends as part of its regular review of TRIP program implementation, and the Board plans to do this.

However, the rule change suggested by the commenter addresses the means by which the Board would discover that there had been a material change in conditions relevant to the TRIP. Since the manner in which the Board becomes aware of such a change has no effect on the Board's authority to act upon it, the commenter's suggested change is not necessary. It should be noted that proposed N.J.A.C. 14:3-10.4(c) was recodified upon adoption at N.J.A.C. 14:3-10.6(c). In addition, a qualification has been added upon adoption that any change must be material.

14:3-10.7 Calculating the TRIP charge

215. COMMENT: In Section 14:3-10.5(b), the Board's goals of encouraging utility investment in areas designated for growth would be more effectively promoted if the TRIP included a return on equity as well as the cost of debt. Without a return on equity, there is no incentive for investment. A TRIP mechanism that would include a return on equity would be similar to the distribution system investment charge that has been implemented in other states, including Delaware and Pennsylvania. (UW)
RESPONSE: Please see the response to comment 225. Also, it should be noted that proposed N.J.A.C. 14:3-10.5 has been recodified upon adoption at N.J.A.C. 14:3-10.7.

216. COMMENT: In N.J.A.C. 14:3-10.5(b)1, the phrase "cost of debt" should be replaced with "overall authorized rate of return." Further, the authorized rate of return should be that approved by the Board in the last base rate case for that regulated entity. (ETG) (NJNG) (SJG)
RESPONSE: Please see the response to comment 225.

217. COMMENT: N.J.A.C. 14:3-10.5(b)(1) should be more specific as to what is meant by the term “adjusted for taxes.” This sentence should mean that in determining the TRIP charge, the tax benefits from the tax deductibility of the cost of debt must be taken into account. However, since the proposed rate of return is limited to the cost of debt (and excludes the non-tax deductible return elements of equity), the (somewhat confusing term) “adjusted for taxes” should not be included in the rules at all. A return on investment in the form of the cost of debt does not have to be adjusted for taxes just as the second TRIP charge component, depreciation expense, does not have to be adjusted for taxes. For that reason, the rules in N.J.A.C. 14:3-10.5(b)(2) do not include the requirement that the depreciation expenses included in the TRIP charge be “adjusted for taxes.” For example, it is unclear whether the Board intends the cost of debt adjustment in the phrase “adjusted for taxes” to mean “after tax” or “net of tax.” (RPA)
RESPONSE: The Board has clarified this in additional proposed amendments, published elsewhere in this issue of the New Jersey Register. Specifically, the Board has proposed a detailed formula for calculating a TRIP charge. The formula clarifies how the Board will implement N.J.A.C. 14:3-10.7(b) (proposed at N.J.A.C. 14:3-10.5(b)) as adopted herein. The formula accounts for the tax-deductible nature of the cost of debt in the calculation of the after tax cost rate, which is

termed "ATCR." The formula is proposed to be added at N.J.A.C. 14:3-10.7(d) through (f).

218. COMMENT: N.J.A.C. 14:3-10.5(c) says that the TRIP charge shall cover only investments that are consistent with the utility infrastructure plan and the approved one-year work plan. But the proposal at 14:3-10.2(g)2, provides that if infrastructure is included in the overall infrastructure plan but was not submitted as a part of the previously-approved one-year construction plan, the utility shall build the infrastructure without charge to the applicant and without requiring a deposit, but shall include the cost as an "additional cost" in the annual TRIP petition. The Board should modify 14:3-10.5(c) to render it consistent with 14:3-10.2(g)2 and clarify that such "additional costs" are eligible for inclusion in the TRIP, even if they were not in the approved one-year work-plan. (PSE&G)
RESPONSE: N.J.A.C. 14:3-10.5(c)3 (relocated upon adoption at N.J.A.C. 14:3-10.3(b)2) has been modified upon adoption to resolve the inconsistency identified by the commenter. It should also be noted that proposed N.J.A.C. 14:3-10.2(g)2 has been recodified upon adoption at N.J.A.C. 14:3-10.4(e)2.

219. COMMENT: The Board's proposal includes a prohibition against the TRIP charge allowing a utility to earn in excess of its allowed return on equity. While inclusion of this concept is understandable, the hard and fast line of allowing an exact ROE is too rigid and can serve as a disincentive to investment. We would propose some band-width allowance as a reasonable alternative to a strict ROE calculation. (JCP&L)
RESPONSE: The requirement that the TRIP charge not allow a regulated entity to earn in excess of its allowed return on common equity is important. If a regulated entity is earning above its allowed rate of return, it can utilize those over-earnings to build the needed infrastructure rather than raising its customers' rates to do so.

220. COMMENT: We agree with the proposed rules in N.J.A.C. 14:3-10.4(a)(1) and (2) that the TRIP charge should cease at the earlier of the times that (1) the infrastructure covered by the TRIP charge is fully depreciated; or (2) at the conclusion of the next rate case for the particular utility. However, the rules in N.J.A.C. 14:3-10.4(a) may not be as complete as the Board intended, and should be examined in light of the subsequent rule in N.J.A.C. 14:3-10.5(d)(3) requiring that "The TRIP charge shall not allow a regulated entity to earn in excess of its allowed return on common equity…" This raises the following questions: First, is it the intention of the rules that the TRIP charge cease at the time that it is determined that the TRIP charge has caused the utility to over-earn, or do the rules envision that any over-earnings be accrued during the particular TRIP period and then credited against the TRIP charge for the next TRIP period? Since it is not feasible to perform any earnings test measurements and make any required TRIP charge changes during a TRIP period, we presume that the earnings test be performed either (a) on a retroactive basis at the end of a TRIP period at the same time as the TRIP charge reconciliation takes place; or (b) at the beginning of a TRIP period prior to the decision as to whether an appropriate TRIP charge should

be in effect during the prospective TRIP period. The advantage of the retroactive earnings test under the approach described in (a) above is that it would be based on actual earnings data. If, under this approach, the earnings test indicates that the utility earned in excess of its authorized return on equity (measured with the inclusion of the TRIP recoverable costs and TRIP revenues) during the TRIP period, then the extent of over-earnings should be calculated and used as an offset against the TRIP charge for the next TRIP period. Alternatively, with this rule, the Board may have envisioned performing the earnings test at the beginning of a TRIP period as described in (b) above and not implement a TRIP charge if this earnings test indicates that the utility is projected to earn in excess of its authorized ROE (measured with the inclusion of the TRIP recoverable costs and TRIP revenues) during the TRIP period. While this approach has the advantage that there will be no TRIP charge during the TRIP period, the disadvantage is that the earnings test is solely based on projected earnings data for the TRIP period. We believe that these uncertainties need to be clarified in the rules. (RPA)
RESPONSE: Please see the response to comment 221 below.

221. COMMENT: If a utility TRIP program is over-earning, and is terminated, we recommend that the over-earnings be returned immediately to ratepayers. While we do not recommend that the Board try to tailor the rules to cover every conceivable circumstance, there should be mechanisms in place to protect ratepayers from paying any money to the utility without the appropriate review and regulatory oversight. Second, the rules do not specify how the earnings test should be conducted and measured. For example, the ROE earnings measurement should not be based on simply dividing a utility's net income available for common stock, as reported for book purposes, into the utility's per books common stock balance during the TRIP period. Rather, the earnings test should reflect a meaningful test based on net income and common equity data that have been appropriately adjusted for Board ratemaking policies and adjustments. (RPA)
RESPONSE: Regarding the disposition of any funds caused by the termination of an over-earning TRIP, the Board has added N.J.A.C. 14:3-10.6(d) upon adoption to clarify what will happen in the event of the termination of a TRIP. This provision will prevent a regulated entity from assessing a TRIP charge for any investments made after the TRIP is terminated. Therefore, the only expenses for which there may be a question of disposition is those over-recovered by a regulated entity prior to a TRIP termination. Since the rules require an annual TRIP charge adjustment, any over-recovery should be of short duration, and can be handled by the Board on a case by case basis. Regarding the earnings test, see the amendments proposed elsewhere in this issue of the New Jersey Register, which include a detailed formula for calculating the TRIP charge.

222. COMMENT: N.J.A.C. 14:3-10.5(b)(1) should specify what types of debt should make up the overall rate of return to be used in the determination of the TRIP charge. The Board should clarify whether the debt intended to be used in this rule is solely Long Term Debt, solely Short term Debt, or a combination of Long Term and Short Term Debt and, if the latter, what would be the suggested ratios for the Long Term and Short Term Debt capital components? (RPA)

RESPONSE: Please see the response to comment 225.

223. COMMENT: The TRIP charge is subject to a limitation at 10.5(d) that it not result in a utility earning in excess of its most recent authorized return on common equity. By definition the TRIP charge is only implemented on capital already invested and assuming it is computed at the overall rate of return as previously recommended, the TRIP revenues couldn't be the cause of a utility over earning. That is, the TRIP charge is designed to result in earnings that equal the authorized return on equity for the investment covered under the TRIP. If a proposed TRIP pilot is encumbered with time consuming and detailed reviews of earnings at current rate levels the process will erode into a general rate case proceeding. The paradigm of a general rate case proceeding to recover the costs involved in the TRIP pilot is precisely what needs to be modified if utility companies will pursue these pilot programs. (PSE&G)
RESPONSE: Please see the response to comment 225 below.

224. COMMENT: The requirement that the eligible TRIP investment be offset with associated accumulated depreciation and accumulated deferred income taxes in the calculation of the allowable rate of return component of the TRIP charge is consistent with, and fully reflects, our position on this matter. The same can be said for the proposed requirement that the rate of return in the TRIP charge be limited to the utility's cost of debt. Because the TRIP mechanism allows for dollar-for-dollar recovery of eligible TRIP investment through a reconcilable rate mechanism outside the context of a general rate case without any significant regulatory lag, the allowed rate of return should exclude a return on equity ("ROE"), i.e., there should be no "profit" element built into the return on investment requirement in the TRIP charge. The ROE cost should also be excluded from the overall TRIP return number in order to approximate some semblance of "cost sharing" between the ratepayers and the stockholders of the TRIP rate mechanism. Excluding a profit element from the TRIP mechanism is also consistent with the Board's past and present policy on other cost adjustment rate clauses. (RPA)
RESPONSE: The Board appreciates the commenter's support for the rules. Please see the response to comment 225 below for additional detail regarding this issue.

225. COMMENT: The proposed return on invested capital to support smart growth, at the current cost of debt, is lower than the return afforded investments in "routine" system improvements; i.e. the overall allowed return on rate base. Simply put, offering an impaired return on TRIP investment sends just the opposite signal to utilities than is intended by the rule; i.e. it does not provide an incentive to invest in smart growth cities. While typically investors expect a higher, not a lower return on more speculative investment and, moreover investments that promote the larger public good could arguably warrant a higher return, we believe that, at the very least, utility investments in TRIP infrastructure should produce the same return as that afforded to "routine" utility system investments. (CPD) (PSE&G) (SJG) (NJNG) (NJA, ETW, MHWA) (JCP&L)

RESPONSE: The rules adopted herein will permit regulated entities to earn more, not less, on approved TRIP investments. Under current ratemaking principles, regulated entities are not permitted to earn any return on infrastructure investments until they are approved by the Board for inclusion in rate base in a future rate case proceeding. At that time the regulated entity is permitted to earn a return, at its overall rate of return on these investments. Under these rules, regulated entities will still be permitted to earn a return, at their overall rate of return, on infrastructure investments when they are included in rate base in a future rate case proceeding. The rule will provide an incentive to regulated entities, by permitting them to earn a return, at the seven year treasury rate plus sixty basis points, on approved TRIP investments until they are included in rate base in a future rate case proceeding. The Board believes that this is the appropriate rate of return for TRIP recovery, and that the overall allowed rate of return would be an inappropriate rate for TRIP recovery for several reasons. First, the overall allowed rate of return is designed to compensate investors for an element of risk. Since, unlike base rates, the TRIP rate would be adjusted periodically and over and under-recoveries would be trued up, the risk of not recovering the approved costs would be virtually eliminated. Further, some of the most recent rate cases were decided several years ago and the authorized rate of return for these regulated entities is based upon outdated assumptions. The TRIP rate of return will be updated annually to reflect current interest rates. In addition, when infrastructure is added to rate base in a rate case, there is an offsetting adjustment made to reflect the revenues from the new customers associated with the infrastructure. Under these rules, there will be no offsetting adjustment made to reflect the revenues from the new customers added as a result of the TRIP infrastructure, until the next rate case. This will provide an additional incentive to regulated entities. Also, under current ratemaking principles, regulated entities would not be permitted to recover depreciation expense on new infrastructure until the infrastructure is included in rate base in a future rate case proceeding. These rules provide for recovery of depreciation expenses associated with approved TRIP infrastructure investments, providing another incentive to regulated entities. To clarify the manner in which the Board intends to apply the provisions governing the TRIP charge at N.J.A.C. 14:3-10.7, the Board sets forth, in a proposal published elsewhere in this issue of the New Jersey Register, a detailed formula showing the exact method of calculation.

226. COMMENT: Trying to establish a current capital cost each year as part of a TRIP filing would turn each proceeding into a mini-rate case, increasing the administrative burden on the utility, the Board and other interested parties. (SJG) (NJNG) (NJA, ETW, MHWA) (JCP&L)

RESPONSE: The Board did not intend to require a case by case determination for each regulated entity of its individual cost of debt. The Board agrees that determining the cost of debt for each regulated entity would result in very time-consuming proceedings and would place unnecessary burdens on the regulated entities and the Board. As proposed, N.J.A.C. 14:3-10.5(b) (recodified upon adoption at N.J.A.C. 14:3-10.7(b)) provided that the Board would determine the current cost of debt based on prevailing economic conditions. This did not clearly

indicate which type of cost of debt would be used – for example, short or long term debt. Therefore, clarification has been added at N.J.A.C. 14:3-10.7(b) to indicate that the Board will determine a regulated entity's current cost of debt based on the rate most recently set by the Federal Reserve for seven year constant maturity treasuries. This will reflect prevailing economic conditions, and will provide what the Board believes is a realistic rate at which a regulated entity should be able to borrow. This is predictable and fair, and will clarify that individual mini-rate cases are not needed for each TRIP charge calculation.

227. COMMENT: 14:3-10.5(c) restricts TRIP charges only to those incurred prior to the time the TRIP petition is filed. However, that approach is logically inconsistent with the concept of encouraging growth in such regions. If only those costs already incurred can be included in a petition, the regulated entity will have already demanded a sizable deposit from the developer to cover its costs incurred prior to that time. Thus, the developer might have the potential for a quicker return of its deposit, but would still have the cash flow problem of posting the deposit upfront. Moreover, this requirement is inconsistent with the detailed review of work plans contemplated. What is the purpose of reviewing future plans if the only costs that are recoverable are those incurred in the past? (CPD)
RESPONSE: TRIP is designed to be applied in situations where no specific developer has yet stepped forward and requested service. The idea is to provide infrastructure prospectively to attract developers and to make an area ready for development. Therefore, the problem envisioned by the commenter should not arise. Also, it should be noted that the provision discussed above has been relocated upon adoption at N.J.A.C. 14:3-10.3(b)1.

228. COMMENT: N.J.A.C. 14:3-10.5(c) requires that the investments includable in the TRIP charge reflect actual expenditures made by the utility that can be verified by all parties prior to inclusion for recovery in the TRIP charge. This is appropriate and we support this requirement. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules. It should be noted that the cited provision has been relocated upon adoption at N.J.A.C. 14:3-10.3.

229. COMMENT: The depreciation expenses included in the TRIP charge under N.J.A.C. 14:3-10.5(b)(2) should reflect current actual per books depreciation rates for the utility rather than some hypothetical “incentive depreciation rate.” It would appear that this is also the intent of the requirement that the depreciation expense in the TRIP charge be based on the utility’s “current overall composite depreciation rate.” However, what is meant by the statement in the next sentence that the overall composite depreciation rate should be “based on economic conditions prevailing during the Board’s review of the petition for approval of the TRIP charge?” It should be clarified in N.J.A.C. 14:3-10.5(b)(2) whether the “overall composite depreciation rate” should be the dollar-weighted result of (1) the application of the then-current Board-approved depreciation rates to the utility’s total plant in service balance during the most recent rate proceeding; or (2) the application of the then-current Board-approved depreciation rates to the utility’s

total plant in service balance during the particular TRIP period at issue; or (3) the application of the then-current Board-approved depreciation rates to the utility's specific TRIP-eligible plant investment types in the particular TRIP period at issue. It would appear that the best basis for the depreciation expense calculation in the TRIP is the overall composite depreciation rate determination in accordance with the method described under alternative (3) above. (RPA)
RESPONSE: N.J.A.C. 14:3-10.7(b)2 (proposed at N.J.A.C. 14:3-10.5(b)2) has been clarified upon adoption to indicate that the rate to which the Board will refer is that applicable to the class of assets that correspond to the eligible investments.

230. COMMENT: The last sentence in N.J.A.C. 14:3-10.5(b)2 should be deleted. (ETG) (NJNG) (SJG)
RESPONSE: Please see the response to comment 229 above.

231. COMMENT: N.J.A.C. 14:3-10.5(d)(4) states that the TRIP charge shall not be set at a level that results in a charge to residential customers that is greater than one percent of the average bill of a typical residential customer for that regulated entity. This rule fully reflects our position that there should be a TRIP rate cap. The utilities will undoubtedly vigorously argue for a higher percentage than the proposed 1% and come up with illustrations showing why this limitation will render the TRIP mechanism ineffective. Indeed, several utility representatives made comments to that effect during the public hearing on March 2. For the program to be properly evaluated, the TRIP should be funded at the lowest level possible that still makes the TRIP goals achievable. Unless or until the utilities demonstrate that the proposed 1% cap substantially interferes with the goals of TRIP, the Board should proceed with caution on any type of guaranteed return program such as this, and adhere to the 1% cap during the TRIP pilot program. (RPA)
RESPONSE: The Board appreciates this comment in support of the rules.

232. COMMENT: Section 14:3-10.5(d)4 should be revised to change the cap to five percent rather than one percent. This would provide a greater incentive and opportunity to carry out significant investments in designated growth areas that otherwise meet the TRIP criteria. (UW)
RESPONSE: In developing the TRIP provisions, the Board must strike an appropriate balance. While it is important to reduce infrastructure barriers to smart growth development, it is also crucial not to place an undue financial burden on ratepayers. The Board believes that this level of investment will provide smart growth benefits without causing unnecessarily high rate increases for customers.

233. COMMENT: While proposed N.J.A.C. 14:3-10.5 prescribes what types of costs may be included and what limitations are applicable in the calculation of the TRIP charge, there is no mention made of the support requirement for the TRIP charge calculation. Somewhere under N.J.A.C. 14:3-10.5 there ought to be a general requirement stating that the TRIP charge calculations should be supported with actual source documentation, detailed financial analyses, and other relevant information showing all assumptions and calculations. All of this supporting financial information should be presented in such a way as to allow intervening

parties in TRIP proceedings to verify all TRIP charge claims, earnings test results, and TRIP rate cap. Furthermore, there should be adequate provision for notice to interested parties, including the Ratepayer Advocate. Having specific, detailed filing requirements for the TRIP petition request would help to reduce the time needed to review these filings. (RPA)

RESPONSE: The Board has clarified N.J.A.C. 14:3-10.5(a)7 to provide more detail on the types of documentation necessary for the required demonstration that the TRIP charge meets the requirements of the rules. In addition, new N.J.A.C. 14:3-10.7(d) has been added upon adoption to cross reference N.J.A.C. 14:3-10.5(a)7. Regarding notice to interested parties, since TRIP filings are petitions, they are subject to the Board's rules for the filing of petitions at N.J.A.C. 14:1-5.12, which include notice provisions. This has been clarified upon adoption at N.J.A.C. 14:3-10.4(c) and 10.5(b).

Additional comments submitted by stakeholders

On October 8, 2004, the Board provided stakeholders that had previously provided input with a draft of the Board's smart growth main extension rule adoption and a draft of additional proposed amendments. These drafts reflected changes that Board staff were planning to recommend to the Board based on comments submitted during the formal comment period ending March 20, 2004, as well as input received during several earlier stakeholder meetings held during the spring and summer of 2004. The drafts were distributed by e-mail to a list of all stakeholders that had attended previous stakeholder meetings on these rules.

The Board received substantial and valuable feedback from stakeholders on the October 8 draft adoption and additional amendments. Comments were received from the New Jersey Builders Association; AT&T; New Jersey Cable Telecommunications Association; Jersey Central Power & Light Company; Sprint; PSE&G; the State of New Jersey's Office of Smart Growth; New Jersey Natural Gas Company; Rockland Electric Company; the New Jersey Pinelands Commission; and Aqua New Jersey.

Many of the stakeholders suggested minor clarifications, corrections to cross-references, and other editorial improvements. A few of the suggestions had already been submitted during the formal comment period. The following is a brief summary of the significant new, non-editorial suggestions received in response to the October 8th drafts, and the changes that the Board made based on this input:

- There was some concern regarding the term "regulated entity." The Board revised the definition to clarify that the focus of the definition is on an entity that is subject to Board jurisdiction. The intent of the definition is not to bring additional entities under Board regulation.
- A commenter pointed out the differences in the timeframes in N.J.A.C. 14:3-8.1(e), which requires regulated entities to submit tariff amendments within 30 days after the effective date of the rules, and N.J.A.C. 14:3-6.2, which requires regulated entities to submit compliance procedures within 180 days after the

effective date of the rules. It is not clear that the completion of either of the submittals hinges on completion of the other, so this change was not made.

- A commenter questioned the use of "new" customers in the extension definition. In particular a concern was expressed that the rules would apply if, for example, an additional phone line is added for a mother-in-law's quarters in an existing house. The Board's interpretation is that this would fall under the main extension rules because a customer is defined at N.J.A.C. 14:3-1.1 as the person identified in the regulated entity's account records as responsible for paying the bill. Therefore, under the mother-in-law scenario, there would not be a new customer, as the person responsible for paying the bill would remain the same, despite the addition of another line to the house.
- It was pointed out that the definition of "extension" as it applies to telecommunications companies was incorrect, and that telecommunications extensions end at the point of demarcation as defined in the regulated entity's tariff. This was corrected upon adoption.
- A commenter suggested detailed definitions of terms including electric/gas capacity, electric/gas demand, electric/gas common plant. The Board does not believe that these are necessary, as the Board has historically used these terms and concepts without significant problems. Should problems arise, the Board will consider rule amendments to add definitions of these terms.
- Concerns were raised about the regulated entities' ability to recover required costs, and over whether regulated entities would be treated similarly when seeking recovery. The Board is confident that its ratemaking process will continue to ensure fair treatment for all regulated entities, and that the costs of the rules will be equitably addressed.
- A commenter suggested that the rule should clarify whether maintenance is covered by the rules. N.J.A.C. 14:3-8.1(b) as adopted clearly states that operation and maintenance are not covered by the rules.
- Mathematical errors were identified in Example A in N.J.A.C. 14:3-8.10. Upon adoption those errors were corrected.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. These adopted amendments and new rules are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. In addition, while there are many Federal laws relating to the regulated entities and regulated services affected by these amendments and new rules, none relate to the distribution of infrastructure extension costs between the regulated entity and the applicant for service. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for these amendments and new rules.

Agency-initiated changes:

At N.J.A.C. 14:3-10.7(c) (proposed at N.J.A.C. 14:3-10.5(d)), the Board has added upon adoption a clarification that for a water utility an applicable customer (i.e., a customer from whom a TRIP charge may be assessed) is any customer. This is because the intent of the paragraph was to exclude lower income customers from the TRIP charge. However, water utilities are not authorized to assess a Societal Benefits Charge (SBC), so a water utility cannot exclude such customers.

Full text of the adopted amendments follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*):

CHAPTER 3 ALL UTILITIES

SUBCHAPTER 1. DEFINITIONS

14:3-1.1 Definitions

The following words and terms, when used in N.J.A.C. 14:3 through 14:10, shall have the following meanings unless clearly indicated otherwise:

. . .

"Regulated entity" means a person or entity that is subject to *[regulation by]* *the jurisdiction of* the Board, or that provides a product or service *[regulated by]* *subject to the jurisdiction of* the Board. This term includes a public utility, as defined herein.

. . .

SUBCHAPTER 6 RECORDS

14:3-6.2 Plant and operating

(a) - (c) (No change.)

(d) Within 180 days after December 20, 2004, each regulated entity shall submit to the Board a procedure for the regulated entity to determine, at the time of receipt of an application for service, whether the requested extension will serve development in a designated growth area or an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. *This subsection shall not apply to a regulated entity that is a cable television operator.*

(e) Each regulated entity shall keep detailed records of all deposits, refunds, and expenditures on extensions, as defined at N.J.A.C. 14:3-8.2, with sufficient detail to enable the regulated entity to demonstrate compliance with this chapter to the Board. *This subsection shall not apply to a regulated entity that is a cable television operator.*

(f) (No change from proposal.)

(g) Each regulated entity shall maintain, for each calendar year, the following records:

1. The amount of trench which it has shared with other regulated entity lines or cables *[, including the financial arrangements for joint use of the trench]*; and
2. The number of subdivisions, the number of lots and the number of buildings or structures, both residential and non-residential, for which service was provided. *The regulated entity shall identify whether these are in designated growth areas or areas not designated for growth. This paragraph shall not apply to a regulated entity that is a cable television operator.*

SUBCHAPTER 8 EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.1 Scope and applicability

(a) This subchapter governs the construction of *[extensions]* *an extension*, as defined at N.J.A.C. 14:3-8.2.

*(b) This subchapter addresses whether and how a regulated entity may contribute financially to an extension made in response to an application for service by a person, as these terms are defined at N.J.A.C. 14:3-1.1 and N.J.A.C. 14:3-8.2. Any other extension is not subject to this subchapter; nor is any maintenance, repair or operation of an extension; or any expansion, upgrade, improvement, or other installation of plant and/or facilities, wherever located.

(c)* This subchapter includes provisions regarding whether an extension shall be placed overhead or underground, and the extent to which a regulated entity may pay for or financially contribute to the costs of an extension. How much a regulated entity is authorized to pay for or financially contribute to an extension varies based on whether the customers that the extension will serve are located in an area not designated for growth, a designated growth area, a smart growth infrastructure incentive program (SGIIP) area, or a targeted revitalization incentive program (TRIP) area, as described at N.J.A.C. 14:3-8.12 and N.J.A.C. 14:3-10, respectively.

[(b)] *(d)* This subchapter applies to extensions made by all regulated entities, as *those terms are* defined at N.J.A.C. 14:3-8.2, except that:

1. *[The]* *This* subchapter *[applies]* *does not apply* to cable television companies *[only as provided at N.J.A.C. 14:18-3.2]*; and
2. *[The]* *This* subchapter does not apply to a portion of an extension that is *[an electric transmission system]* *regulated by the Federal Energy Regulatory Commission (FERC)*.

[(c)] *(e)* This subchapter applies to construction of extensions to provide service to all customers, whether residential or non-residential.

[(d)] *(f)* This subchapter does not provide for a calculation of the dollar amount that a regulated entity may charge for construction of an extension. This amount is

determined based on tariffs submitted to the Board by each regulated entity and approved by the Board.

*[(e) If a regulated entity's tariff conflicts with this subchapter, the regulated entity shall submit to the Board a modified tariff that complies with this subchapter within 30 days after December 20, 2004. The modified tariff shall also be consistent with principles of smart growth. For example, the modified tariff shall not provide that a larger deposit is required from an applicant requesting service to a designated growth area, or that the deposit shall be returned over a longer period of time. If the regulated entity's existing tariff would have the regulated entity collect a smaller deposit, or refund deposits faster, than this subchapter would require, no modification is necessary under this subsection.

(f)]* *(g)* This subchapter is intended to fulfill the mandate at N.J.S.A. 48:2-23 that regulated entity service be safe, adequate and proper, and furnished in a manner that tends to conserve and preserve the quality of the environment. One way in which this subchapter fulfills that mandate is through *[cost]* provisions that *generally do not permit* *[remove incentives for]* regulated entities to invest *,* in *response to an application for service, in new* infrastructure in areas that are not designated for growth.

*(h) Nothing in this subchapter shall require a regulated entity to construct an extension or portion thereof if the extension would not be required under N.J.S.A. 48:2-27 or other applicable law.

14:3-8.1A Waiver request, operative date

(a) If a regulated entity requests a waiver of one or more requirements in this subchapter (as effective December 20, 2004) in accordance with N.J.A.C. 14:1-1.2(b), the waiver shall include documentation that the requirements of N.J.A.C. 14:1-1.2(b)1 and 2 are met. Specifically, the waiver request shall demonstrate how full compliance with the requirement(s) of this subchapter would adversely affect ratepayers and the ability of the regulated entity to render safe, adequate and proper service in an environmentally responsible manner; and shall demonstrate that the regulated entity's proposed alternative will meet the purposes and intent of this subchapter at least as effectively as the requirements that will be waived. Any such waiver request shall be submitted by January 18, 2005, and the Board shall act on the waiver request within 180 days after receipt of a complete waiver petition.

(b) This subchapter (as effective December 20, 2004) shall become operative on March 20, 2005, except for (a) above, which shall become operative on December 20, 2004.

14:3-8.1B Submission of modified tariff

Each regulated entity shall submit to the Board a modified tariff that complies with this subchapter as operative March 20, 2005 (see 36 N.J.R. {page number to be filled in by OAL}) by January 19, 2005.*

14:3-8.2 Definitions

In addition to the definitions at N.J.A.C. 14:3-1.1, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

. . .

"Cost" means, with respect to the cost of construction of an extension, actual expenses incurred for materials and labor *(including both internal and external labor)* employed in the design, purchase, construction, and/or installation of the extension, including overhead directly attributable to the work, as well as overrides or loading factors such as those for back-up personnel for mapping, records, clerical, supervision or general office functions.

"Center designation" or "designated center" means a center that has been officially recognized as such by the State Planning Commission in accordance with their rules at N.J.A.C. 5:85 *or in the Pinelands Area, a center recognized as such pursuant to a valid Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey State Planning Commission.* *[The State Planning Commission may designate a center through the cross-acceptance process or as part of the plan endorsement process.]*

"Designated growth area" means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (*Metropolitan Planning Area, or* PA-1);
2. Planning Area 2 (*Suburban Planning Area, or* PA-2);
3. A designated center; *[or]*
4. An area identified for growth as a result of *[a final petition for]* either *an* initial or advanced *petition for* plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7 *[.] ;*
5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or
6. A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town, as designated in the Comprehensive Management Plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-8.

Assistance in determining whether a particular parcel of land is in a designated growth area can be obtained through the Department of Community Affairs Office of Smart Growth website at http://www.nj.gov/dca/osg/.

"Distribution revenue" means a regulated entity's total revenue, minus the following, as applicable:

1. For a gas public utility, as defined at N.J.A.C. 14:4-2.2, Basic Gas Supply Service charges assessed in accordance with the gas public utility's tariff; and
2. For an electric public utility, as defined at N.J.A.C. 14:4-1.2, Basic Generation Service charges assessed in accordance with the electric public utility's tariff.

*["Distribution" means the movement or transmission of a substance, signal or form of energy to customers, from the generation point of the substance, signal or form of energy, or from transmission plant and/or facilities.

"Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises. An electric distribution system generally carries less than 69 kilovolts of electricity.

"Electric transmission system" means that portion of an electric system which carries electricity from its point of generation to the electric distribution system. An electric transmission system generally carries 69 or more kilovolts of electricity.]*

"Extension" means the construction or installation of plant and/or facilities by a regulated entity to convey *[a regulated]* service from existing *or new* plant and/or facilities to one or more new customers, and also means the plant and/or facilities themselves. This term includes all plant and/or facilities for transmission and/or distribution, whether located *overhead or underground,* on a public street or right of way, or on *a* private property *or private right of way*, including the wire, *poles or supports,* cable, pipe, conduit or other means of conveying *[a regulated]* service from existing plant and/or facilities to each unit or structure to be served *[.]* *, except as excluded at 1 through 6 below. An extension begins at the existing infrastructure and ends as follows:

1. For water service, the extension ends at the curb of the property or properties on which the customers to be served are located, but also includes the meter. Any piping, fire hydrants and branches, or other water infrastructure (with the exception of the water meter), which is within the boundary of the property or properties to be served, is not included in the extension and is the responsibility of the customer;
2. For gas service, the extension ends at the meter and includes the meter;
3. For an overhead extension of electric service, the extension ends at the point where the service connects to the building, but also includes the meter;
4. For an underground extension of electric service, the extension ends at, and includes, the meter; unless the applicant and the regulated entity make other arrangements; and

5. For telecommunications service, the extension ends at the point of demarcation as defined in the regulated entity's tariff.*

. . .

"New Jersey State Planning Commission" means the commission established by the State Planning Act, N.J.S.A. 52:18A-196 et. seq.

["Office of State Planning" means the entity created by N.J.S.A. 52:18A-201, and its successor entities.]

"Office of Smart Growth" means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as the Office of State Planning, described at N.J.S.A. 52:18A-201.

"Planning Area" has the meaning assigned to the term in the rules of the *[Department of Community Affairs]* *State Planning Commission* at N.J.A.C. 5:85-1.4. As of December 20, 2004, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level of development, or environmental sensitivity. The State Development and Redevelopment Plan sets forth *[Policy Objectives]* *planning policies* that *serve as the framework to* guide growth in the context of those conditions. *[Planning areas are intended to guide the application of the Plan's Statewide Policies, as well as guiding local planning and decision on the location and scale of development within the Planning Area.]*

"Plant and/or facilities" means any machinery, apparatus, or equipment, including but not limited to mains, pipes, aqueducts, canals, wires, cables, fibers, substations, *poles or other supports,* generators, engines, transformers, burners, pumps, and switches, used for generation, transmission, or distribution of water, energy, telecommunications, cable television or other service that a regulated entity provides. This term *includes service lines and meters, but * does not include equipment used solely for administrative purposes, such as office equipment used for administering a billing system.

["Transmission" means the movement, transfer or transmission of a substance, signal, or form of energy from its generation point, either to distribution plant and/or facilities, or to end users.]

14:3-8.3 General requirement to provide extensions

(a) - (c) (No change from proposal.)

(d) In constructing and operating an extension, a regulated entity shall use equipment and practices that meet all applicable requirements in this chapter, and which are

consistent with *applicable* industry *best practices and standards and the regulated entity's minimum system design* standards. An applicant may request equipment or service which exceeds these standards. If the regulated entity provides this *excess* equipment or service, the regulated entity may charge the applicant for the full cost of the excess facilities requested, in accordance with *[this subchapter.]* *N.J.A.C. 14:3-8.9(d)3.

(e) A regulated entity shall construct an extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with the regulated entity's and/or the industry's system design standards, even if the applicant requests less capacity.*

14:3-8.4 *[Requirement to put certain extensions underground]* *Reserved*

*[(a) This section governs whether an extension, as defined at N.J.A.C. 14:3-8.2, shall be made underground or overhead.

(b) An extension for water or gas service shall be underground in all cases. An extension of cable television service shall be made in accordance with N.J.A.C. 14:18-2.1 et seq.

(c) An extension of electric or telephone service shall be made underground if the extension meets any of the following criteria:

1. The extension will serve three or more building lots;
2. The extension will be placed along streets that were constructed after {effective date of this rule}, or along streets constructed prior to that date which are not already served by overhead facilities;
3. The extension will provide service to one or more residential structures for which a certificate of occupancy is issued by the local authorities after {effective date of these rules}; or
4. The extension is of high-capacity main line electric distribution facilities with a capacity of 4 megavolt amps (MVA) or more.

(d) An extension of telephone or electric service that is not subject to (c) above may be made overhead.

(e) If a building that would require underground service under (c) above is located on a lot that abuts an existing street on which overhead facilities are already installed, the building may be served overhead, at the discretion of the regulated entity.

(f) Underground service shall be reasonably equivalent to comparable overhead service, and shall ensure that the customer will receive safe, adequate and proper service with a minimum increase in the difference in cost between overhead and underground service. If a customer desires underground service where it is not required under (c) above, the regulated entity shall provide underground service, but the customer shall be responsible for the difference in cost between installing overhead

service and installing underground service.

(g) When an extension is installed underground, certain components may be installed above ground if necessary for safety or to provide reasonable access for maintenance. Examples are interconnecting points and pedestals, and electric transformers.

(h) If unusual circumstances would unreasonably delay a regulated entity's ability to provide underground service, temporary facilities may be installed in whatever manner is most practical under the circumstances. However, the regulated entity shall replace such temporary facilities as soon as practical with permanent underground service in accordance with this subchapter. A regulated entity may request from the Board an adjustment of the charges in the applicable tariff in order to cover any excess cost due to temporary installation.

(i) All street lighting in a development with underground electric service shall also be served underground.

(j) When the requirement that an extension be located underground will result in hardship, inequity, or will be discriminatory to other affected parties, the regulated entity or applicant may request from Board staff a special exemption, or approval of special conditions. Board staff may require, as a condition of such a request, that the requesting party deposit in an escrow account an amount up to the estimated difference in cost between underground and overhead service.

(k) Where affected regulated entities determine that it is practical, electric cables, communication cables, and cable television cables shall be installed in the same trench, if this can be done consistent with all applicable codes and regulations, and in particular those pertaining to safety.

(l) Where a trench is to be used for more than one regulated service, a regulated entity is not required to begin work on the underground system until the applicant has made arrangements with all affected regulated entities to coordinate the installation of all services in the trench.]*

14:3-8.5 General provisions regarding costs of extensions

(a) A regulated entity shall not pay for or financially contribute to the cost of an extension, as defined at N.J.A.C. 14:3-8.2, except in accordance with this subchapter or N.J.A.C. 14:3-10. *This section applies in addition to the requirements of N.J.A.C. 14:3-8.6 or 8.7, whichever is applicable.*

(b) (No change from proposal.)

*(c) The estimated cost of an extension for which a regulated entity receives a deposit, or receives a non-refundable contribution, shall include the tax consequences incurred

by the regulated entity as a result of receiving deposits under the Tax Reform Act of 1986.*

[(c)] *(d)* Regulated entities, customers, applicants, developers, builders, municipal bodies and other persons shall cooperate fully in order to facilitate construction of an extension at the lowest reasonable cost consistent with system reliability and safety. This includes sharing trenches where practicable, and coordinating scheduling and other aspects of construction to minimize delays and to avoid difficult conditions such as frozen or unstable soils. A municipality shall not impose an ordinance or other requirement that conflicts with this subchapter, or which would prevent or interfere with another person's compliance with this subchapter.

[(d)] *(e)* Each regulated entity shall submit for Board approval a proposed tariff containing charges for services, including installation of underground service. *[These proposed tariffs shall be supported by unit costs of construction in the form required for approval by the Board.]* The regulated entity shall periodically *[update]* *submit updated* tariffs *on its own initiative or* as requested by the Board.

[(e)] *(f)* If an applicant requests an extension to serve both a designated growth area and an area not designated for growth, the regulated entity shall pay for the portion of the extension that is necessary for and will be used to serve a designated growth area in accordance with N.J.A.C. 14:3-8.7. The regulated entity shall pay for or contribute financially to the portion of the extension that will serve the area not designated for growth only in accordance with (h) below.

(g) A regulated entity shall construct each extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with N.J.A.C. 14:3-8.3(e). For example, if an applicant requests a four kilovolt extension of electric service but the regulated entity's minimum system design standard is thirteen kilovolts, the regulated entity shall construct a thirteen kilovolt extension. In such a case, the cost of the extension for purposes of this subchapter and the suggested formula shall be the full cost of the thirteen kilovolt extension, and not merely the cost of a four kilovolt extension.

(h) There may be a case where an applicant requests an extension and the regulated entity wishes to construct additional capacity over that required under N.J.A.C. 14:3-8.3(e). If a regulated entity chooses to construct an extension or portion of an extension with additional capacity, over that which is needed to comply with N.J.A.C. 14:3-8.3(e), the regulated entity may pay for or contribute financially to the incremental cost of the additional capacity, or may require the applicant to pay for it. However, if any of the additional capacity is added to serve anticipated customers in an area not designated for growth, the Board will consider this fact when considering whether the investment in additional capacity was reasonable and prudent, in determining whether to allow the regulated entity to include the cost of the additional capacity in its rate base.

(i) This subchapter does not prohibit a regulated entity from constructing an extension or performing related services in exchange for compensation. A regulated entity may

contract with an applicant for service to design, purchase, construct or maintain an extension on behalf of the applicant. However, the regulated entity shall be paid for the cost of constructing or installing the extension, in accordance with this subchapter.

(j) A regulated entity shall charge customers in a designated growth area only for costs related to the portion of an extension that is necessary for and will be used to serve the designated growth area.

(k) The costs of any installation or construction of infrastructure, which is not governed by this subchapter, shall be governed by other applicable law.*

14:3-8.6 Costs for extension serving an area not designated for growth

(a) This section governs *a regulated entity's authority to pay for or contribute financially to* an extension *[that will]* *or portion thereof, which has been requested solely to* serve development in an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. The section phases out a regulated entity's authority to pay for such an extension *or portion thereof. The requirements in this section apply in addition to those of N.J.A.C. 14:3-8.5.

(b) If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(h).*

(c) During the three year phasing out period, a regulated entity may choose not to contribute to *[such]* an extension *or portion thereof, described at (a) above*, or may choose to contribute *[only]* in accordance with the adjusted formula set forth at *[(c) or (d)]* *(e) or (f)* below, as applicable. *[After the phasing out period, the regulated entity is prohibited from paying for or contributing financially to an extension subject to this section.

(b) If an extension meets any of the criteria at 1 through 4 below, a regulated entity shall not pay for or financially support the extension, except in accordance with (c) or (d) below, or in accordance with an exemption under N.J.A.C. 14:3-8.8:

1. The extension is constructed entirely within an area not designated for growth;
2. The extension is designed, constructed and/or used to provide service to customers located in an area not designated for growth;
3. The extension has a capacity beyond that needed to serve a designated growth area, except that in such a case, a regulated entity may pay for the portion of the extension that is necessary to serve a designated growth area. For example, a regulated entity may construct an extension in a designated growth area, which will serve the designated growth area, but which has additional capacity intended to serve a nearby area not designated for growth. In such a case, the regulated entity may pay for or financially contribute to the extension up to the amount that would be necessary to serve the designated growth area, but shall not pay for or

financially contribute to the portion of the extension that is not necessary to serve the designated growth area; or

4. Any extension that is not described at N.J.A.C. 14:3-8.7(b).

(c)]* *(d)* Beginning *March 20, 2005 and ending January 1, 2006*, if a regulated entity chooses to contribute to an extension described at *[(b)]* *(a)* above, the regulated entity shall *[apply]* *contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if* the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 *is applied*, *[except that]* each refund to the applicant shall be calculated by multiplying annual *distribution* revenue from each customer by the following, rather than by ten:

1. For extensions of water service, by 1.5; and
2. For extensions of all other regulated services, by 3.

[(d)] *(e)* Beginning January 1, 2006 *and ending January 1, 2007*, if a regulated entity chooses to contribute to an extension described at *[(b)]* *(a)* above, the regulated entity shall *[apply]* *contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if* the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 *is applied*, *[except that]* each refund to the applicant shall be calculated by multiplying annual *distribution* revenue from each customer by the following, rather than by ten:

1. For extensions of water service, by .75; and
2. For extensions of all other regulated services, by 1.5.

[(e)] *(f)* After January 1, 2007, a regulated entity shall not pay for or financially support an extension *or portion thereof* described at *[(b)]* *(a)* above *[in any way]* *except pursuant to an exemption under N.J.A.C. 14:3-8.8*, and in addition the Board shall not consider the cost of the extension when determining the regulated entity's rates under N.J.S.A. 48:2-21.

*[(f) This subchapter does not prohibit a regulated entity from constructing an extension or performing related services in exchange for compensation. A regulated entity may contract with an applicant for service to design, purchase, construct or maintain an extension on behalf of the applicant. However, the regulated entity shall be paid in full in advance for the full cost of the extension.

(g) If an extension to serve development in a designated growth area is constructed with financial assistance from a regulated entity in accordance with N.J.A.C. 14:3-8.4 or 8.5, the regulated entity shall not subsequently use that extension to provide service to customers in an area not designated for growth, except pursuant to (h) below. For example, if a regulated entity pays to construct a service line that passes through an area not designated for growth in order to serve customers in a designated growth area, the regulated entity shall not subsequently allow customers in the area not designated for growth to connect to that line.

(h) If a regulated entity has paid for or financially supported an extension to serve customers in a growth area and wishes to later use the extension to serve customers in an area not designated for growth, the regulated entity may petition the Board for an

exemption to (e) above based on extraordinary hardship or public benefit in accordance with N.J.A.C. 14:3-8.8.]*

14:3-8.7 Costs for extension serving a designated growth area

(a) This section governs the regulated entity's authority to pay for or contribute financially to an extension *or portion thereof* that *[will]* *has been requested in order to* serve development in a designated growth area, as described at (b) below. *The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.5.*

(b) *[However, if]* *If* an extension is part of a project that the Board has approved for inclusion in a Targeted Revitalization Incentive Program (TRIP) under N.J.A.C. 14:3-10, the cost of the extension shall not be governed by this section but shall be governed by N.J.A.C. 14:3-10, as applicable. The cost of an extension that will serve development in an area not designated for growth is governed by N.J.A.C. 14:3-8.6. *If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(h).*

*[(b) If an extension subject to this section meets either of the criteria at 1 or 2 below, a regulated entity shall pay for or financially contribute to the extension in accordance with this subchapter:

1. The extension is constructed entirely within a designated growth area and has a service capacity no greater than is needed to serve the designated growth area;
2. Regardless of its location, the extension is designed, constructed and used solely to provide service to customers located in a designated growth area and:
   i. Has a service capacity no greater than is needed to serve the designated growth area; or
   ii. Has a service capacity capable of serving both a designated growth area and an area not designated for growth. In such a case, the regulated entity shall pay only for the portion of the extension that is necessary for and will be used to serve a designated growth area. For example, a regulated entity may construct an extension in a designated growth area, which will serve the designated growth area, but which has additional capacity intended to serve a nearby area not designated for growth. In such a case, the regulated entity may pay for or financially contribute to the extension up to the amount that would be necessary to serve the designated growth area, but shall not pay for or financially contribute to the portion of the extension that is not necessary to serve the designated growth area.]*

[(c)] *(b)* The cost of an extension described at *[(b)]* *(a)* above shall be *[distributed between the regulated entity and the applicant as follows:

1. If the extension, or a portion thereof, is reasonable, practicable, will generate sufficient revenue, and the regulated entity is in a financial condition which reasonably warrants the expenditure, the regulated entity shall provide the extension or portion thereof at no cost to the applicant, although a deposit may

be required under (d) below. Any remaining portion of the extension shall be governed by 2 below; and

2. If the extension, or a portion thereof, does not meet the criteria at 1 above, the regulated entity may contribute financially to the extension or portion. The amount of the regulated entity's financial contribution to such an extension shall be]* determined by mutual agreement between the regulated entity and the applicant. If a regulated entity and an applicant cannot agree upon a financial arrangement regarding the cost of an extension, either party may petition the Board to apply the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

[(d)] *(c)* For an extension *[covered by (c) 1]* *described at (a)* above, a regulated entity may require a deposit *prior to construction* from an applicant in any case where the regulated entity is not expected to receive a substantial portion of the revenue from the extension within the first five years after the extension is constructed. The deposit shall be refunded to the applicant in accordance with the suggested formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

*[(e) A regulated entity shall charge customers in a designated growth area only for costs related to the portion of the extension that is necessary for and will be used to serve the designated growth area.

(f) If a regulated entity has paid for or financially supported an extension to serve customers in a designated growth area in accordance with this subchapter, the regulated entity shall not subsequently use that extension to provide service to customers in an area not designated for growth, except pursuant to an exemption based on extraordinary hardship or public benefit, issued by the Board in accordance with N.J.A.C. 14:3-8.8. For example, if a regulated entity pays to construct a service line that passes through an area not designated for growth in order to serve customers in a designated growth area, the regulated entity shall not subsequently allow customers in the area not designated for growth to connect to that line.]*

14:3-8.8 Exemptions from cost limits on areas not designated for growth

(a) The following shall be exempt from the requirements for costs of extensions to serve development in an area not designated for growth at N.J.A.C. 14:3-8.6 *[for the following]*:

1. *[Maintenance or repair of existing plant and/or facilities, as described in (c) below]* *Reserved*;
2. An extension serving certain agricultural buildings, as described in (d) below;
3. A prior agreement or Board order requiring a regulated entity to provide certain extensions without charge, as described at (e) below;
4. A project already in progress as of *[January 20, 2004]* *March 20, 2005*, as described in (g) below;
5. A project that will provide a significant public good, as described in (h) below; and
6. A project for which compliance would cause extraordinary hardship, as described in (i) below.

(b) (No change from proposal.)

(c) *[Maintenance or repair of existing plant and/or facilities that would otherwise be subject to N.J.A.C. 14:3-8.6 shall be exempt from N.J.A.C. 14:3-8.6, provided that:

1. The maintenance or repair is necessary to keep existing plant and/or facilities in working order; and
2. The maintenance or repair will neither enable the regulated entity to increase the number of customers it serves in an area not designated for growth, nor will it expand or increase the regulated entity's ability to provide service to existing customers in an area not designated for growth, except to the extent that maintenance or repair performed to the industry standard results in an increase in capacity of infrastructure.]* *Reserved.*

(d) An extension with the sole purpose of serving an agricultural building or structure whose sole use is the production, storage, packing or processing of agricultural or horticultural products, provided that a majority of these products were produced on a New Jersey commercial farm, as defined in N.J.S.A. 4:1C-3, shall be exempt from the limits at N.J.A.C. 14:3-8.6. *The costs for an extension covered by this subsection shall be governed by the requirements for extensions to serve a designated growth area at N.J.A.C. 14:3-8.7.*

(e) (No change from proposal.)

(f) If the Board has, prior to March 20, 2005, executed a binding agreement providing for a regulated entity to contribute financially to an extension, the regulated entity may contribute financially to the extension, to the extent required for compliance with the prior agreement. *[A Board approval of a municipal consent ordinance approving cable television service is an example of such a prior agreement.]* However, this exemption does not cover a telecommunications infrastructure upgrade project serving areas not designated for growth under the Plan of Alternative Regulation, approved by Board Order issued under Docket No. TO92030358.

(g) *[An extension for which]* *If* construction *of an extension* has begun prior to March 20, 2004, or *[for which the]* *if a* regulated entity has committed in writing *to pay for or financially support the extension*, prior to March 20, 2004 *[to pay for or financially support]* , *the extension* shall be exempt.

(h) To obtain an exemption based on a significant public good, a person shall demonstrate to the Board that all of the following criteria are met:

1. The project or activity served by the extension would provide a significant benefit to the public or to the environment;
2. That the project described in 1 above is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of *[State Planning]* *Smart Growth* and other State agencies; and

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

(i) To obtain an exemption based on extraordinary hardship, a person shall demonstrate to the Board that all of the following criteria are met:

1. Compliance with this subchapter would cause an extraordinary hardship;
2. The extraordinary hardship results from unique circumstances that do not apply to or affect other projects in the region;
3. The unique circumstances arise from the project itself and not from the *[personal]* *circumstances or* situation of the regulated entity or its customers; and
4. Neither the extraordinary hardship nor the unique circumstances are the result of any action or inaction by the regulated entity, its shareholders, or its customers.

(j) The cost of an extension that is exempt under this section shall be distributed as follows:

1. If an extension is eligible for an exemption based on a prior agreement or Board order under (e) above, the regulated entity shall pay for or financially contribute to the extension only to the extent required by the prior agreement or Board order. To the extent that the prior agreement does not specify the distribution of costs for the extension, the requirements for extensions that serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;
2. If an extension is eligible for an exemption based on a project in progress under (f) above, the regulated entity shall pay for or financially contribute to the extension only to the extent that it previously committed to do so in a written agreement. To the extent that the regulated entity has not committed to pay for the extension, the requirements for extensions that serve an area not designated for growth at N.J.A.C. 14:3-8.6 shall govern;
3. For an exemption based on significant public good or extraordinary hardship, the Board shall determine the distribution of costs for the extension at the time of approval of the exemption;* and

*[3.] *4.* For any exemption not covered at 1 *[or 2]* *, 2, or 3 above, the regulated entity shall pay for or financially contribute to an extension in accordance with the requirements at N.J.A.C. 14:3-8.7 governing extensions in a designated growth area.

14:3-8.9 Designated growth area suggested formulae – general provisions

(a) Board staff will apply the suggested formula *[in this section]* only if all of the following criteria are met:

1. The extension *[will serve development that meets the requirements at]* *is subject to* N.J.A.C. 14:3-8.7;
2. The extension is not included in a Board-approved TRIP program; and
3. Either the regulated entity or the applicant for service submits a request to Board staff to apply the suggested formula, based on the parties' inability to reach agreement upon the amount of the regulated entity's financial contribution to the extension.

(b) (No change from proposal.)

(c) For both types of formulae (single residential customer and other), the applicant shall provide the regulated entity with a deposit. The amount of the deposit shall be determined according to the provisions for multi-unit developments at N.J.A.C. 14:3-8.10 or for single residential customers at N.J.A.C. 14:3-8.11, as applicable. The regulated entity shall then construct the extension, and shall refund the *portions of the* deposit *that are refundable under (g) below* according to the formula set forth at N.J.A.C. 14:3-8.10 or 8.11, as applicable.

(d) For purposes of determining the amount of the deposit and applying the suggested formula, the following shall apply:

1. The regulated entity shall estimate the cost of the extension in accordance with the applicable tariff, and shall include the tax consequences incurred by the regulated entity under the Tax Reform Act of 1986 as a result of receiving the deposit;
2. *[2. The cost of an extension of water service shall not include the cost of fire hydrants or their branches;
3.]* *2.* The regulated entity shall assume that the electric service connection to each building will be at the nearest corner of the building to the point at which the service enters the property;
4. *[4.]* *3.* If an applicant requests service that costs more than that which is standard *under the regulated entity's and/or the industry's system design standards*, or if an extension presents an unusual situation in which providing standard service is substantially more expensive than usual, the regulated entity may charge the applicant or the customer for the extra expense. *In accordance with (h) below, this charge is not refundable.* For example, for an underground extension, *costs of* pavement cutting and restoration, rock removal, blasting, or unusual or difficult digging conditions requiring equipment and methods not generally used may be charged to the applicant. In such a case, the regulated entity shall *not* charge the applicant *more than* the actual *[low bid]* cost for the extra work required *[, and the regulated entity shall offer the applicant the option to perform the work or hire a contractor to do so. However, the regulated entity need not offer the applicant this option if the regulated entity has a prior contract, approved by the Board, providing for a contractor to perform the work]*; and
5. *[5.]* *4.*If the extension requires a regulated entity to pay an attachment charge for the use of utility poles located on private property and not owned by the regulated entity, the regulated entity may include the cost of the attachment charge when calculating the cost of the extension.

(e) The regulated entity shall notify the applicant of the actual cost of the extension within 30 days after the actual costs are known, and *[no more than 90 days]* *as soon as reasonably practical* after construction is completed. As *the application process and the* construction proceeds, the amount of the deposit shall be adjusted as needed

to reflect the actual cost. If the amount of the deposit exceeds actual costs at the completion of construction, the regulated entity shall return any excess. If the deposit is less than actual costs, the applicant shall provide the necessary additional funds to the regulated entity.

(f) Any amount not refunded within ten years after the *[first customer begins receiving services]* *date upon which the regulated entity is first ready to render service from the extension* shall remain with the regulated entity. In no event shall a regulated entity refund more than the total deposit amount to the applicant.

*(g) The following portions of a deposit shall be refundable under the suggested formula:

1. For any extension, the cost of the portion of the extension that runs from existing infrastructure to the boundary of the property on which the new customers to be served are located (that is, to the subdivision gate; or for an individual lot, to the curb of the lot);
2. For an extension of gas infrastructure, the cost of the portion of the extension that is within the boundary of the property or properties on which the new customers to be served are located; and
3. For an underground extension of electricity or telecommunications service, the amount it would cost to serve the customers overhead.

(h) The following portions of the deposit are nonrefundable and shall constitute a contribution in aid of construction (CIAC):

1. For all extensions, the cost of extra service, or of extra work required to provide standard service, in accordance with N.J.A.C. 14:3-8.9(d)3; and
2. For an underground extension of electricity or telecommunications service, the additional cost for underground service over and above the amount it would cost to serve those customers overhead. This shall include the cost of any temporary overhead installation under N.J.A.C. 14:3-8.4(h).*

14:3-8.10 Designated growth area suggested formula – multi-unit or non-residential development

(a) This section governs how Board staff will apply the suggested formula to the cost of *[extensions described at]* *an extension that is subject to* N.J.A.C. 14:3-8.7 *[(a)]*, except *for* an extension for a single residential customer, which is covered under N.J.A.C. 14:3-8.11, an extension covered by a SGIIP under N.J.A.C. 14:3-8.12, or an extension included in a Board-approved TRIP under N.J.A.C. 14:3-10. *The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.9.*

(b) (No change from proposal.)

(c) For purposes of calculating the amount of the deposit, the development for which service is requested shall be determined by reference to the subdivision map approved by the applicable local authorities. If a development is to be approved and constructed

in phases, *[each phase of the development shall be treated as a separate development for purposes of this subchapter]* *the applicant shall indicate which phases are to be treated as separate developments for purposes of determining the deposit and applying the suggested formula.*

(d) As each customer begins receiving services, the regulated entity shall refund a portion of the deposit to the applicant. For each customer, this *[initial]* *customer startup* refund shall be the estimated annual *distribution* revenue that will result from the customer, multiplied by ten.

(e) One year after *[each customer begins receiving services, and annually thereafter]* *the regulated entity received the deposit, and each subsequent year thereafter*, the regulated entity shall *provide an annual* refund *[an additional amount]* to the applicant *[for that customer]*. *The first annual refund shall be calculated in accordance with (f) below. Subsequent annual refunds shall be calculated under (g) below.

(f)* The *first* annual refund shall be *[that customer's actual revenue for the previous year, multiplied by ten]** *calculated by multiplying by ten the difference between:

1. The distribution revenue from all customers that were served by the extension for the entire previous year; and
2. The estimated annual distribution revenue, upon which the original customer startup refund was based, for all customers that were served by the extension for the entire previous year.*. If the *[actual]* *distribution* revenue for the first year *, determined under (f)1 above,* was less than the estimated *annual distribution* revenue (upon which the *[deposit]* *original customer startup refund* amount was based), the regulated entity *[shall not]** *is not required to* provide *[a]** *an annual* refund.

(g)* For *[any]* *each* subsequent year, *[if the revenue for the year is less than the revenue for the previous year, the regulated entity shall not provide a refund.]* *the annual refund shall be calculated as follows:

1. Sum the distribution revenue from all customers that were served by the extension for the entire previous year;
2. Determine the sum of:
   i. The distribution revenue that was used in calculating the most recent annual refund provided to the applicant. This is the amount determined under (g)1 above when this subsection was applied to determine the most recent annual refund; and
   ii. The original estimated annual revenue for all customers that were served by the extension for the entire previous year, but whose revenues were not included in the calculation of the most recent annual refund that the regulated entity provided to the applicant;
3. Subtract (g)2 above from (g)1 above. If (g)2 above is greater than (g)1 above, the regulated entity is not required to provide a refund; and

4. If (g)2 above is less than (g)1 above, multiply the difference derived under (g)3 above by ten to determine the annual refund.

(h) In determining the revenue from a customer or set of customers for purposes of the suggested formula, the regulated entity may in its discretion use estimated or actual revenues, unless otherwise specified in this subchapter.*

[(f)] *(i)* See *[example A]* *examples A1 and A2* below for an illustration of the use of the suggested formula for *[a]* *some sample* multi-unit *[development]* *developments*.

*[EXAMPLE A -- Suggested formula applied to a 10 unit residential development

When?	Action	Amount
Before construction	Applicant provides deposit.	$15,000.00
First customer comes online	Regulated entity gives first refund to applicant, calculated by multiplying estimated annual revenue from first customer ($430) by 10.	$4,300.00
After first refund	Amount of deposit remaining with regulated entity.	$10,700.00
Second customer comes online	Regulated entity gives second refund to applicant, calculated by multiplying estimated annual revenue from second customer ($500) by 10.	$5,000.00
After second refund	Amount of deposit remaining with regulated entity.	$5,700.00
Third customer comes online	Regulated entity gives third refund to applicant, calculated by multiplying estimated annual revenue from third customer ($400) by 10.	$4,000.00
After third refund	Amount of deposit remaining with regulated entity.	$1,700.00
Fourth customer comes online	Refund from fourth customer, calculated by multiplying estimated annual revenue from fourth customer ($350) by 10, exceeds remaining deposit. Regulated entity gives remainder of deposit to applicant. Transaction is complete.	$1,700.00

]*

***Example A1**
Suggested formula applied to a 10 unit residential development
Each year produces more revenue

	When?	Action	Amount
Year one	Before construction	Applicant provides deposit.	$20,000.00
	First customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from first customer ($430) by 10.	$4,300.00
	After first customer's startup refund	Amount of deposit remaining with regulated entity.	$15,700.00
	Second customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from second customer ($500) by 10.	$5,000.00
	After second customer's startup refund	Amount of deposit remaining with regulated entity.	$10,700.00
End of year one	One year has passed since deposit was provided	Regulated entity gives applicant first annual refund, based on customers served for all of year one. Refund is calculated by multiplying by ten the difference between: i. The actual distribution revenue from customer 1 ($480); and ii. The original estimate of annual distribution revenue from customer 1 ($430). This difference is $50.	$500.00
Year two	After first annual refund	Amount of deposit remaining with regulated entity.	$10,200. 00
	Third customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from third customer ($400) by 10.	$4,000.00
	After third customer startup refund	Amount of deposit remaining with regulated entity	$6,200.00

End of year two	Two years have passed since deposit was provided	Regulated entity gives applicant second annual refund, based on customers that were served for all of year two. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 ($520) and customer 2 ($580). This results in a total of $1,100; and ii. Determine the sum of: ? The actual distribution revenue used in calculating the most recent annual refund ($480); and ? The original estimated annual revenue from customer 2 ($500); ? This results in a total of $980; iii. Subtract ii above from i above, resulting in a difference of $120; and iv. Multiply the difference derived under iii above by 10.	$1,200.00
Year three	After second annual refund	Amount of deposit remaining with regulated entity	$,5,000.00
	Fourth customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from fourth customer ($350) by 10.	$3,500.00
	After fourth customer startup refund	Amount of deposit remaining with regulated entity	$1,500.00

End of year three	Three years have passed since deposit was provided	Regulated entity gives applicant third annual refund, based on customers that were served for all of year three. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 ($550), customer 2 ($610), and customer 3 ($550). This results in a total of $1,710; and ii. Determine the sum of: ? The actual distribution revenue used in the calculation of the most recent annual refund ($1,100); and ? The original estimated annual revenue from customer 3 ($400); ? This results in a total $1,500; iii. Subtract ii from i above, resulting in a difference of $210; and iv. Multiply the difference derived under iii above by 10, resulting in an annual refund of $2,100. Since $2,100 exceeds the remaining deposit, the regulated entity gives the applicant the remainder of the deposit ($1,500). Transaction is complete.	$1,500.00

Example A2
Suggested formula applied to a 10 unit residential development
Second year produces less revenue

	When?	Action	Amount
Year one	Before construction	Applicant provides deposit.	$20,000.00
	First customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from first customer ($430) by 10.	$4,300.00
	After first customer's startup refund	Amount of deposit remaining with regulated entity.	$15,700.00
	Second customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from second customer ($500) by 10.	$5,000.00
	After second customer's startup refund	Amount deposit remaining with regulated entity	$10,700.00
End of year one	One year has passed since deposit was provided	Regulated entity gives applicant first annual refund, based on customers served for all of year one. Refund is calculated by multiplying by 10 the difference between: i. The actual distribution revenue from customer 1 ($480); and ii. The original estimate of annual distribution revenue from customer 1 ($430). This difference is $50.	$500.00
Year two	After first annual refund	Amount of deposit remaining with regulated entity.	$10,200. 00
	Third customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from third customer ($400) by 10.	$4,000.00
	After third customer startup refund	Amount of deposit remaining with regulated entity.	$6,200.00

End of year two	Two years have passed since deposit was provided	Regulated entity gives applicant second annual refund, based on customers that were served for all of year two. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 ($520) and customer 2 ($370). This results in a total of $890; and ii. Determine the sum of: ? The actual distribution revenue used in calculating the most recent annual refund ($480); and ? The original estimated annual revenue from customer 2 ($500); ? This results in a total of $980; iii. Subtract ii above from i above, resulting in a difference of -$90; and iv. Because -$90 is less than 0, no refund is provided.	0.00
Year three	After second annual refund	Amount of deposit remaining with regulated entity.	$6,200.00
	Fourth customer comes online	Regulated entity gives a customer startup refund to applicant, calculated by multiplying estimated annual distribution revenue from fourth customer ($350) by 10.	$3,500.00
	After fourth customer startup refund	Amount deposit remaining with regulated entity	$2,700.00

End of year three	Three years have passed since deposit was provided	Regulated entity gives applicant third annual refund, based on customers that were served for all of year three. Refund is calculated as follows: i. Sum the actual distribution revenue from customer 1 ($550), customer 2 ($610), and customer 3 ($550). This results in a total of $1,710; and ii. Determine the sum of: ? The actual distribution revenue used in the calculation of the most recent annual refund ($480); ? The original estimated annual revenue from customer 2 ($500) and customer 3 ($400); ? This results in a total of $1,380; iii. Subtract ii from i above, resulting in a difference of $330; and iv. Multiply the difference derived under iii above by 10, resulting in an annual refund of $3,300. Since $3,300 exceeds the remaining deposit, the regulated entity gives the applicant the remainder of the deposit ($2,700). Transaction is complete.	$2,700.00*

14:3-8.11 Designated growth area suggested formula – single residential customer

(a) *The requirements in this section apply in addition to the requirements of N.J.A.C. 14:3-8.9.* This section addresses how Board staff will apply the suggested formula to the costs of an extension that meets the following criteria:

1. The extension will serve only a single residential customer;
2. The extension meets the criteria for serving a designated growth area at N.J.A.C. 14:3-8.7; and
3. The extension is not covered by a TRIP under N.J.A.C. 14:3-10.

(b) To determine the deposit required for an extension to serve a single residential customer subject to this section, the regulated entity shall:

1. Estimate the actual cost of the extension required to bring service to the customer from the nearest existing infrastructure;
2. Estimate the annual *distribution* revenue that will be derived from the customer, and multiply it by ten, to obtain estimated *distribution* revenue over a ten year period;
3. Subtract the estimated ten year *distribution* revenue determined under 2 above from the estimated cost of the extension determined under 1 above. This is the amount of the deposit.

(c) One year after the customer begins receiving service, the regulated entity shall calculate the *[actual]* *distribution* revenue derived from the customer's first year of service. If the *[actual]* year one *distribution* revenue is less than the estimated annual *distribution* revenue that was used in (b)2 above to determine the deposit, the regulated entity is not required to provide a refund. If the *[actual]* year one *distribution* revenue exceeds the estimated annual *distribution* revenue, the regulated entity shall provide a refund to the applicant. The amount of the refund shall be the difference between the estimated and annual year one *distribution* revenues, multiplied by ten.

(d) Two years after the customer begins receiving service, the regulated entity shall calculate the *[actual]* *distribution* revenue derived from the customer's second year of service. If the *[actual]* year two *distribution* revenue is less than the *[actual]* year one *distribution* revenue, the regulated entity is not required to provide a refund. If the *[actual]* year two *distribution* revenue exceeds the *[actual]* year one *distribution* revenue, the regulated entity shall provide a refund to the applicant. The amount of the refund shall be the difference between the *[actual]* year one *distribution* revenue and the *[actual]* year two *distribution* revenue, multiplied by ten.

(e) (No change from proposal.)

[(f) Any portion of a deposit that the regulated entity has not refunded to the applicant within ten years after the date upon which the regulated entity is first ready to render service from the extension shall be retained by the regulated entity.]

[(g)] *(f)* If, during the ten year period after a single residential customer begins receiving service, additional customers connect to the extension, the regulated entity shall increase the initial customer's annual refund to reflect the additional revenue. In such a case, the regulated entity shall add to the initial customer's refund an amount ten times the *[actual]* *distribution* revenue derived from the additional customers for that year. This additional *distribution* revenue shall include the following:

1. For a water main extension, amounts paid by a municipality for fire protection during the year; and
2. For a telecommunications extension, amounts earned or saved during the year through use of the extension to carry the regulated entity's toll circuits.

[(h)] *(g)* See Example B below for an illustration of the use of the suggested formula for a single residential customer:

EXAMPLE B

Suggested formula applied to a single residential customer

When?	Action	Amount
Before construction	Applicant gives deposit, determined as follows, to regulated entity: 1. Estimate total cost of extension ($7,500); 2. Estimate annual *distribution* revenue ($500); 3. Multiply annual *distribution* revenue by ten ($5,000); and 4. Subtract item 3 from item 1 to determine deposit.	$2,500.00
One year after customer comes on line	If *[actual]* first year *distribution* revenue is less than estimated annual *distribution* revenue ($500), no refund. If *[actual]* first year *distribution* revenue ($525) is more than estimated annual *distribution* revenue ($500), regulated entity gives first refund to applicant. Refund is determined as follows: 1. Subtract estimated annual *distribution* revenue ($500) from *[actual]* first year *distribution* revenue ($525); and 2. Multiply item 1 ($25) by 10 ($250).	$250.00
Amount of deposit remaining with regulated entity after first refund		$2,250.00
Two years after customer comes online	If *[actual]* second year *distribution* revenue is less than *[actual]* first year revenue ($525), no refund. If *[actual]* second year *distribution* revenue ($575) is more than *[actual]* first year *distribution* revenue ($525), regulated entity gives second refund to applicant. Refund is determined as follows: 1. Subtract *[actual]* first year *distribution* revenue ($525) from *[actual]* second year *distribution* revenue ($575); and 2. Multiply item 1 ($50) by 10 ($500).	$500.00
Amount of deposit remaining with regulated entity after second refund		$1,750.00
Continue with this process each year, until ten years has passed or deposit is completely refunded, whichever comes first		

14:3-8.12 Smart growth infrastructure *[incentive]* *investment* program (SGIIP)

(a) This section sets forth the process by which the Board may authorize coverage of certain infrastructure investments under a smart growth infrastructure investment program (SGIIP). Under a SGIIP, the costs of infrastructure shall be governed by the same rules that apply to extensions serving designated growth areas at N.J.A.C. 14:3-8.7, except that the following shall apply:

1. The regulated entity may include the cost of necessary relocations *, upgrades,* and expansions of infrastructure, which *[is]* *are* necessary to serve new customers, in the costs covered by the SGIIP; and
2. If the suggested formula is used, the regulated entity shall apply the expedited refund formula described at (c) below to the costs of an extension, as defined at N.J.A.C. 14:3-8.2, or a relocation*, upgrade,* or expansion of infrastructure, that meets the requirements at (c) below.

(b) A SGIIP area is any area in a municipality that is located in planning area 1 *, and* for which the municipality has obtained appropriate formal *[sanction]* *endorsement* from the *[Office of]* State Planning *Commission* .

(c) In a SGIIP, an extension serving development in the SGIIP area shall be covered in the same manner as an extension serving a designated growth area under N.J.A.C. 14:3-8.1 through 14:3-8.11, except that *if the suggested formula is applied,* the following differences shall apply:

1. *[If the suggested formula is applied, the]* *The* rate at which deposits are refunded to the applicant shall be 20 times annual *distribution* revenue, rather than 10 times; and
2. In determining the amount of a deposit under N.J.A.C. 14:3-8.11*[(b)]* for a single residential customer, the calculation at N.J.A.C. 14:3-8.11(b)*[2]* shall multiply annual *distribution* revenue by 20 times rather than by 10 times; and
3. Any costs that a regulated entity charges to an applicant for the relocation*, upgrade,* or expansion of infrastructure to serve a development for which the regulated entity is also providing an extension shall be considered part of the deposit. The regulated entity shall refund such costs at a rate of 20 times annual *distribution* revenue as described in the suggested formulae at N.J.A.C. 14:3-8.10 and 14:3-8.11.

SUBCHAPTER 10 Targeted revitalization *[infrastructure]* *incentive* program (TRIP)

14:3-10.1 Purpose and scope, general provisions

(a) This subchapter establishes a Targeted Revitalization Incentive Program, or TRIP, which is a pilot program intended to remove infrastructure-related barriers to development in certain areas designated for growth. Under a TRIP, the Board may, on a pilot basis, authorize a regulated entity to *charge customers for the costs of installing* *[install]* certain infrastructure in a *[target]* *specific* area in order to build

the necessary capacity to serve planned and prospective development that is described in a municipal master plan, and is approved by the State Planning Commission in accordance with this section.

(b) - (c) (No change from proposal.)

*[(d) To be eligible for coverage under a TRIP, infrastructure shall meet either of the criteria at 1 or 2 below, and in addition shall meet the requirements at N.J.A.C. 14:3-10.2:

1. The infrastructure is constructed entirely within a TRIP area and has a service capacity no greater than is needed to serve the TRIP area; or
2. The extension is designed, constructed and used solely to provide service to customers located in a TRIP area, and meets one of the following criteria:
   i. The infrastructure has a service capacity no greater than is needed to serve the TRIP area; or
   ii. The infrastructure has a service capacity capable of serving both the TRIP area and also other areas. In such a case the TRIP pilot shall cover only the portion of the infrastructure that is necessary for and will be used to serve the TRIP area. For example, a regulated entity may construct infrastructure in a TRIP area, which will serve the TRIP area, but which has additional capacity intended to serve a nearby designated growth area. In such a case, the TRIP would cover only that portion of the infrastructure that is necessary to serve the TRIP area. The allowable cost under the TRIP pilot would be pro-rated based on the amount of capacity intended to serve the TRIP areas vs. other areas. The infrastructure not covered by the TRIP would be governed by the applicable provisions covering extensions at N.J.A.C. 14:3-8.]*

[(e)] *(d)* The Board shall require frequent and detailed monitoring and reporting of construction and expenditures during all phases of the TRIP, in order to ensure prudent investment and compliance with this chapter.

[(f)] *(e)* All petitions to the Board regarding TRIP activities shall be jointly submitted by the regulated entity and the municipality.

*(f) This subchapter shall become operative on March 20, 2005.

14:3-10.2 TRIP area defined

(a) "TRIP area" means an area that meets one or more of the following criteria:

1. The area is within a Planning Area 1 and the municipality has received initial plan endorsement for the area from the State Planning Commission in accordance with N.J.A.C. 5:85-7.1; and
2. The area is within a Planning Area 2, 3, 4, or the municipality has received advanced plan endorsement for the area from the State Planning Commission in accordance with N.J.A.C. 5:85-7.1, and the Office of Smart Growth has recommended consideration of the area for a TRIP.

14:3-10.3 Investments eligible for coverage under a TRIP

(a) To be eligible for coverage under a TRIP, infrastructure shall be designed, constructed and used solely to serve one or more of the following:

1. Anticipated new customers located in a TRIP area;
2. A number of additional customers served in a TRIP area, resulting from an increase in the density of land use. For the purposes of this section, the density of land use shall be measured by the number or square footage of residential units, or by the square footage of non-residential space; or
3. Anticipated new customers located in both the TRIP area and also other areas. In such a case the TRIP shall cover investments only for the portion of the infrastructure that is necessary for and will be used to serve the TRIP area. This shall be calculated in accordance with N.J.A.C. 14:3-10.7 below.

(b) To be eligible for coverage under a TRIP, infrastructure shall, in addition to meeting the requirements of (a) above, meet both of the following criteria:

1. The investments shall reflect actual expenditures made by the regulated entity prior to the submittal of a petition for approval or adjustment of a TRIP charge to cover the investments; and
2. The investments shall be consistent with the utility infrastructure plan and one year work plan submitted under N.J.A.C. 14:3-10.4(b), as approved by the Board, or shall comply with N.J.A.C. 14:3-10.4(g)2.

(c) A regulated entity shall not recover the following costs through a TRIP:

1. Any construction, installation, replacement or rehabilitation of infrastructure that is necessary to provide safe, adequate and proper service to existing customers;
2. Any investment that does not reflect reasonable and prudent costs;
3. Rehabilitation of infrastructure that is fully depreciated and is near the end of its useful life;
4. Replacement of infrastructure that is fully depreciated and is near the end of its useful life, except in accordance with (d) through (f) below;
5. Removal of existing depreciated infrastructure;
6. Promotional expenses;
7. Costs incurred in order to comply with regulatory requirements, for example, legal fees, or costs for preparation of petitions and filings; or
8. Any investments in portions of the TRIP area where the municipality does not anticipate growth, as shown in the municipal master plan and development plan or redevelopment plan.

(d) In accordance with (c)4 above, a portion of the cost of replacement infrastructure shall be eligible for recovery through TRIP if it will be used to serve current customers and prospective customers in a TRIP area, in accordance with (e) below. If the replacement infrastructure is not needed to serve new customers envisioned by the endorsed plan and build out analysis submitted under N.J.A.C. 14:3-10.4(b), it shall not be recoverable through the TRIP charge. Replacement of infrastructure that will solely serve portions of the TRIP area where growth is not anticipated by the municipality shall not be eligible for recovery through the TRIP charge. In addition, the cost of replacing

existing services and meters necessary to connect with the replacement infrastructure shall be included in the replacement costs in accordance with (e).

(e) If replacement infrastructure will be used to serve current customers and prospective customers in a TRIP area, a portion of the cost shall be eligible for recovery through TRIP. To determine the recoverable portion, the Board shall divide the capacity needs of the current customers by the capacity needs of both the current and anticipated new customers, and shall multiply that result by the total cost of the infrastructure. For example, if current gas customers will need 100 therms, anticipated new gas customers will need 200 therms, and the new pipe will deliver 1000 therms, the total cost of the replacement pipe will be divided as follows: 1/3 to the regulated entity and 2/3 to the TRIP (recovery through the TRIP charge), not 1/10 to the regulated entity and 9/10 to the TRIP charge. For the purpose of this subsection, the number and type of anticipated new customers shall be those envisioned by the endorsed plan and build out analysis submitted under N.J.A.C. 14:3-10.4(b).

(f) For the purposes of this subchapter, a class of infrastructure shall be considered fully depreciated at the point at which the composite depreciation rate for the class of infrastructure, multiplied by the number of years that the infrastructure has been in service, is greater than or equal to 1. The composite depreciation rate for infrastructure shall be that determined by the Board in the regulated entity's most recent rate case.

(g) Infrastructure investments not covered by the TRIP shall be governed by the applicable provisions for extensions at N.J.A.C. 14:3-8.

***[14:3-10.2]* *14:3-10.4 Initial* Board approval of a TRIP**

(a) (No change from proposal.)

(b) To obtain Board approval of a TRIP, a regulated entity and a municipality shall jointly apply to the Board and shall present the following information in a format provided by the Board:

1. Evidence that the municipality has obtained *[formal sanction]* *the applicable designation or endorsement required for a TRIP area* from the *[Office of]* State Planning *[that its municipal master plan, zoning and ordinances are consistent with the State Plan, and a]* *Commission;*
2. *A* description of the planning areas in the municipality *[. TRIP is primarily aimed at planning area 1. However, the Board may consider a petition for approval of a TRIP covering infrastructure that will serve development in planning area 2 or a designated center, at the request of the Office of State Planning]* ;

[2. The] *3. A copy of the* current municipal master plan, zoning and relevant ordinances, any relevant development or redevelopment plans, *and a build out analysis for the TRIP area,* that describe exactly what new development the municipality is planning for in terms of new residential units or new square feet of commercial or industrial space;

[3.] *4.* A utility infrastructure plan, which may cover a period of time up to 5 years, describing all infrastructure the *[utility applicant]* *regulated entity* estimates will be needed, including cost estimates;

[4.] *5.* A one year work plan for the first year of the TRIP, which provides specificity and detail regarding the work the regulated entity intends to complete in the first year of the TRIP, including maps detailing where the work is to be done, and a breakdown of estimated costs;

[5.] *6.* A demonstration of how the work proposed in the utility infrastructure plan in *[3]* *4* above is necessary to provide service to the development anticipated in *[2]* *3* above; and

[6.] *7.* Any other information necessary to evaluate compliance with this subchapter.

*[(c) To be eligible for coverage under a TRIP, an infrastructure investment must meet all of the following criteria:

1. The infrastructure is necessary to serve new development and/or new customers in the TRIP area;
2. The infrastructure will expand capacity and service to increase the potential number of customers served, or to increase the density of land use, as measured by the number of residential units, and/or the number of square feet of industrial or commercial space; and
3. The investment shall reflect reasonable and prudent costs.

(d) A regulated entity shall not recover the following costs through a TRIP:

1. Any construction, installation, replacement or rehabilitation of infrastructure that is necessary in order to provide safe, adequate and proper service to existing customers;
2. Any investment that does not reflect reasonable and prudent costs;
3. Replacement or rehabilitation of infrastructure that is fully depreciated and is near the end of its useful life;
4. Promotional expenses;
5. Costs incurred in order to comply with regulatory requirements, for example, legal fees, or costs for preparation of petitions and filings; or
6. Removal of existing depreciated infrastructure.]*

*(c) When submitting a petition for initial approval of a TRIP, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

(d) The Board shall provide notice of its receipt of the petition for initial approval of a TRIP on the Board's web page at www.bpu.state.nj.us, and will make the petition available for public inspection.*

(e) - (f) (No change from proposal.)

(g) Once the Board has approved a TRIP pilot, the regulated entity shall begin infrastructure investments in accordance with the activities in the first one-year work

plan, as approved by the Board under *[N.J.A.C. 14:3-10.2(e)]* *this section*. If a developer *or new customer* requests *[extension of a regulated]* service *[to]* *for* a new development in the TRIP area during the time frame covered by the TRIP pilot, the regulated entity shall build the necessary infrastructure and shall not charge the applicant or require a deposit, provided that:

1. The development to be served is consistent with the municipal plans, zoning and ordinance submitted to the Board as part of the TRIP *[application]* *petition*; and
2. The new infrastructure is consistent in timing and content with the one-year work plan for that year, which the Board approved under *[N.J.A.C. 14:3-10.2(e) *this section*. If the infrastructure is *[year, but is]* included in the overall utility infrastructure plan described in N.J.A.C. 14:3-*[10.2]* *10.4* (b), but was not submitted as part of the one-year work plan, the regulated entity shall build the necessary infrastructure without charge to the applicant and shall not require a deposit. The regulated entity shall include this cost as an additional cost in the annual TRIP adjustment petition, described in N.J.A.C. 14:2-*[10.3]* *10.5* below. The regulated entity shall maintain detailed records of expenditures on infrastructure constructed in the TRIP area.

***[14:3-10.3]* *14:3-10.5* Annual TRIP adjustment petition**

(a) After eligible investments have begun, the regulated entity *and the municipality* shall submit an annual TRIP adjustment petition to the Board in a format provided by the Board and shall include the following types of information:

1. Detailed descriptions of all eligible investments and the development, existing and prospective, served by infrastructure constructed under the TRIP;
2. The amount of new utility service capacity provided by the investments;
3. A one-year work plan for all infrastructure construction planned for the forthcoming year under the TRIP, and the estimated cost of this infrastructure, consistent with N.J.A.C. 14:3-*[10.2]* *10.4*(b)*[4]*;
4. Any changes in zoning laws, development or redevelopment plans, or other requirements relevant to development in the TRIP area, that have occurred since the TRIP was initially approved;
5. An accounting of the type and size of new development that is being served (housing, commercial, industrial, number of units, jobs, office space) in the TRIP area;
6. An update of the utility infrastructure plan submitted under N.J.A.C. 14:3-*[10.2]* *10.4*(b), showing any changes necessitated by changes in development patterns, municipal plans or zoning, or any other causes. The updated utility infrastructure plan shall be consistent with all local plans and ordinances, *and* with the State Plan*[, and with N.J.A.C. 14:3-10.1 through 10.3]*; and
7. The proposed TRIP charge, determined in accordance with *[this section]* *N.J.A.C. 14:3-10.7*, and detailed information demonstrating that the proposed TRIP charge meets the requirements at *[N.J.A.C. 14:3-10.4]* *N.J.A.C. 14:3-10.7. Such information shall support the TRIP charge calculation with documentation, detailed financial analyses, and other relevant information showing all assumptions and calculations. All of this supporting financial

information shall be presented in such a way as to allow the Board to evaluate whether the calculations meet all requirements of this subchapter*.

(b) When submitting an annual TRIP adjustment petition, a regulated entity shall comply with the notice requirements for petitions at N.J.A.C. 14:1-5.12.

[(b)] *(c)* The Board shall review each annual TRIP adjustment petition, and shall determine:

1. Whether the completed investments meet the requirements in this subchapter;
2. Whether the regulated entity's proposed TRIP charge meets the requirements at N.J.A.C. 14:3-*[10.4]* *10.7*;
3. Whether the updated utility infrastructure plan remains consistent with all local plans and ordinances, with the State Plan, and with N.J.A.C. 14:3-10.1 through *[10.3]* *10.5*; and
4. Whether to approve an additional year of the TRIP.

[(c)] *(d)* In determining whether to approve an additional year of the TRIP, the Board shall consider, at a minimum, the following:

1. - 3. (No change from proposal.)

[(d)] *(e)* The Board may condition participation in the TRIP for a subsequent year on modifications to the updated utility infrastructure plan and the proposed work plan for the upcoming year, to ensure consistency with this subchapter.

***[14:3-10.4]* *14:3-10.6* Termination of a TRIP**

(a) (No change from proposal.)

(b) If at any time the Board determines that the municipal master plan or zoning and ordinances are no longer consistent with the State Plan or principles of smart growth, or if the *[Office of]* State Planning *Commission revokes the previously granted plan endorsement pursuant to N.J.A.C. 5:85-7.13,* *[rescinds its formal certification of State Plan consistency, Board approval of the TRIP will be void and]* all activities under the TRIP shall stop within *[3]* *three* months *after the Board determination or the Commission's revocation, whichever is earlier*.

(c) If the Board finds at any time that a regulated entity is not in compliance with the TRIP as approved, or if *there is a material change in* development patterns, economic trends, or other trends relevant to the prudence of the planned *[and prospective]* development *[being]* *to be* served by infrastructure constructed under the TRIP, the Board may cancel the TRIP approval upon three months notice to the regulated entity.

*(d) If a TRIP terminates under (b) or (c) above, the following shall apply, as applicable:

1. The regulated entity may continue to assess the TRIP charge for any investments made under the TRIP prior to the termination;
2. The regulated entity shall not use a TRIP charge to pay for any investments made after the TRIP is terminated; and
3. If an applicant requested an extension prior to the termination of the TRIP, which would have been covered under the TRIP, the regulated entity shall not require the applicant to provide a deposit for the extension, but may require the applicant to furnish a deposit for any additional work not requested prior to the termination of the TRIP.*

[(d)] *(e)* If the Board has not adopted a permanent TRIP to replace the pilot TRIP within five years after initial approval of a regulated entity's TRIP pilot, the regulated entity shall stop initiating infrastructure investments under the TRIP.

***[14:3-10.5]* *14:3-10.7* Calculating the TRIP charge**

(a) When a regulated entity has submitted *[a petition for approval of a TRIP charge]* *a TRIP adjustment petition* in accordance with N.J.A.C. 14:3-*[10.3]* * 10.5* , the Board shall determine the amount of the TRIP charge in accordance with this section.

(b) The Board shall set the amount of a TRIP charge at a level that will provide the regulated entity with the following:

1. A return on eligible TRIP investments, offset by accumulated depreciation and accumulated deferred income taxes, and adjusted for taxes. The return shall be set at the regulated entity's current cost of debt, adjusted for taxes. The current cost of debt shall be determined by the Board *[based on economic conditions prevailing during the Board's review of the petition for approval of the TRIP charge, and]* *and calculated using the rate for seven year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to August 31, plus sixty basis points*; and
2. Recovery of depreciation expense on the eligible investments, calculated using the regulated entity's *[current]* overall composite depreciation rate *in effect for

that class of assets*. *[The current overall composite depreciation rate shall be determined by the Board based on economic conditions prevailing during the Board's review of the petition for approval of the TRIP charge.

(c) The TRIP charge shall cover only investments that meet all of the following criteria:
1. The investments meet the requirements for eligible investments at N.J.A.C. 14:3-10.2;
2. The investments reflect actual expenditures made by the regulated entity prior to the submittal of the petition for approval of the TRIP charge; and
3. The investments are consistent with the utility infrastructure plan and approved one year work plan provided under N.J.A.C. 14:3-10.2(e)1.]*

[(d)] *(c)* The TRIP charge shall be subject to the following limits:
1. The TRIP charge shall be calculated and assessed on a per unit of service basis. The TRIP charge per unit of service shall be the same for all applicable customers while the TRIP charge is in effect. *[Applicable]* *For all regulated entities except for water utilities, applicable* customers shall be those customers from which a regulated entity is authorized to assess the Societal Benefits Charge (SBC) *. For water utilities, applicable customers shall be all customers*;
2. *[The TRIP charge shall be used only to recover prudently incurred costs of eligible investments, as defined at N.J.A.C. 14:3-10.1;
3.]* *2.* The TRIP charge shall not allow a regulated entity to earn in excess of its allowed return on common equity, as determined by the Board in the most recent base rate case for that regulated entity. Amounts not recoverable under this paragraph shall not be deferred;
4. *[4.]* *3.*The TRIP charge shall not be set at a level that results in a charge to residential customers that is greater than 1% of the average bill of a typical residential customer for that regulated entity; and
5. *[5.]* *4.*Any other limits or conditions necessary to ensure that the TRIP charge complies with (b) above.

(d) All TRIP charge calculations shall be supported as required under N.J.A.C. 14:3-10.5(a)7.

***[CHAPTER 18 REGULATIONS OF CABLE TELEVISION**

SUBCHAPTER 3 CUSTOMER RIGHTS

14:18-3.2 Requests for service

(a) - (f) No change.
(g) In an area not designated for growth, as defined at N.J.A.C. 14:3-8.2, any Certificate of Approval or Renewal Certificate of Approval for which an ordinance was issued after {the effective date of these rules} shall include provisions ensuring compliance with N.J.A.C. 14:3-8.

(h) In a designated growth area, as defined at N.J.A.C. 14:3-8.2, any Certificate of Approval or Renewal Certificate of Approval for which an ordinance was issued after {the effective date of these rules} shall specify that a cable television company shall provide service to the entirety of the municipality at no cost to customers beyond standard and non-standard installation rates.

SUBCHAPTER 6. RECORDS

14:18-6.2 Plant and operating records

(a) – (b) No change.

(c) Each cable television operator shall comply with the requirements for record keeping and reporting set forth at N.J.A.C. 14:3-6.2.

SUBCHAPTER 11. APPLICATION BY CABLE TELEVISION COMPANIES FOR MUNICIPAL CONSENT

14:18-11.2 Application for municipal consent to operate a cable television system

(a) Every application for a consent shall be submitted on a standard form supplied by the Office, which form shall include, but not be limited to, the following information:

1. – 5. (No change.)

6. Rates for television reception service:

i. Installation of service, including a statement that the applicant shall comply with N.J.A.C. 14:3-8 regarding extension of service;

ii.– iii. (No change.)

7. - 8. (No change.)]*